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SAFEGUARD MEASURES
AND THE
INTERNATIONAL TRADE SYSTEM

by

Gerry Salembier, B. Comm

A thesis submitted to the
Faculty of Graduate Studies and Research
in partial fulfillment of the requirements
for the degree of
Master of Arts in International Affairs

The Norman Paterson School of International Affairs
Carleton University
Ottawa, Ontario
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November 7, 1989

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The undersigned hereby recommend to the Faculty of
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ABSTRACT

This paper examines the role of safeguards provisions in international trade agreements; analyzes actual experience with safeguards in the multilateral trade system; reviews past attempts to negotiate improved multilateral rules governing safeguards; and suggests key considerations for future negotiations aimed at new, effective rules on the use of safeguards. The thesis of the paper is straightforward. The provisions of Article XIX of the GATT provide inadequate multilateral restraint on domestic pressures for safeguard measures. These measures are damaging to national economies and to international relations, but domestic political pressures favour their use and maintenance over time. Several recent attempts to negotiate safeguard rules have been unsuccessful. In order to be effective, a new approach must take into account the rise of new, complex, and diverse forms of protectionism, and, most importantly, the domestic structural adjustment problems that underlie the use of safeguards.

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CHAPTER 1: INTRODUCTION

The international trade system has come under increasing strain in recent years. The effectiveness of the General Agreement on Tariffs and Trade (GATT), the centrepiece of the system, as a constraint on national trade policies is increasingly in doubt. Against the background of the significant achievements in the liberalization of world trade under GATT auspices over the post-Second World War period, there has been a rising incidence of protectionism, a trend which has continued since the conclusion in 1979 of the last major round of multilateral trade negotiations (the Tokyo Round). This trend has created concerns among policymakers and analysts in major trading nations that the trade system is falling into disrepair, with potentially serious consequences for growth and stability in the world economy.

One of the most critical gaps in the system is the lack of effective discipline over "safeguard" measures. As defined in the GATT and contemporary trade laws, safeguards are one of several types of "contingent protection" measures used by governments to restrict imports, ostensibly on a temporary basis, that cause or threaten injury to domestic industries. These instruments of contingent protection are nothing more than additional, special barriers at the border to international competition, over and above the standing protection afforded by trade barriers such as tariffs, permanent import quotas (for

example those used as adjuncts to domestic agricultural supply management programs), or preferential government procurement policies.^[1]

Unlike other types of contingent protection, such as anti-dumping and countervailing duties which are intended to counter so-called "unfair" trading practices, safeguards are used in situations where domestic industries are simply unable to meet increased competition from "fairly" traded imports. The trade law of the U.S provides for recommendations for import relief to the President by the International Trade Commission in cases where increased imports are a substantial cause or threat of serious injury to a domestic industry. Canadian trade law similarly provides for inquiries by the Canadian International Trade Tribunal in cases where an industry or the government itself feel that increased imports are causing or threatening injury. Several other countries have similar provisions for safeguard action. However, even those countries with such trade legislation on their books may also take safeguard actions of various types outside of the legal framework.

For the purposes of this paper, the term "safeguard" is defined in a more general sense: a measure of additional protection, other than a countervailing or anti-dumping duty, that is invoked by a government in circumstances where a domestic industry faces actual or potential injury from an increase in imports.

In this broader context, safeguard measures may or may not be imposed in accordance with GATT rules. Article XIX of GATT, entitled "Emergency Action on Imports of Particular Products", sets out certain conditions under which safeguards may be used, and establishes the rights and obligations of the country taking such action and of the countries affected by it.^[2] Among other things, a safeguard measure imposed under Article XIX must apply to imports from all GATT contracting parties in accordance with the general most-favoured-nation (MFN) principle of GATT. The country applying the safeguard measure is also obliged to enter into consultation with affected exporting countries. In practice, these consultations are conducted with a view to offering compensation in the form of lower trade barriers on other products, although strictly speaking there is no obligation to offer compensation. If no agreement can be reached through consultations, the exporting countries are entitled to retaliate with higher barriers to imports from the country concerned. Article XIX also stipulates that a safeguard action take the form of the withdrawal of a previously negotiated concession, which in practice has permitted tariff increases as well as the imposition of import quotas and other trade barriers otherwise prohibited under GATT.

Increasingly, governments under pressure from industries seeking safeguard protection have found the stipulations of Article XIX too inconvenient and have seen fit instead to use "grey area measures" that circumvent the GATT rules. Such measures enable countries to

avoid the inconvenience and potential costs of GATT scrutiny, compensation or retaliation, and MFN application of import restrictions. Grey area measures include a variety of new types of trade restrictions that have come into use in recent years. These often take the form of arrangements negotiated bilaterally between an importing country and individual exporting countries outside the GATT framework. Notable examples include the "voluntary export restraints" (VERS) on automobiles negotiated in the early to mid-1980's between Japan and several major importing countries, including Canada and the U.S., and the "orderly marketing agreements" (OMA's) put in place by the United States (USA) and virtually all foreign suppliers of steel to its market in the mid-1980s. With market-sharing arrangements of this type, safeguard protection can be targeted to specific sources of imports, and the Article XIX provisions relating to compensation and retaliation evaded and notification to GATT avoided.

Even when imposed in accordance with Article XIX, safeguard measures have come to be part of a general backsliding into protectionism. Petitions for safeguard protection, particularly in the US trade remedy system, are often made by domestic industries after other remedies such as anti-dumping and countervailing duties have been denied. Moreover, in many cases failure to gain or maintain the desired safeguard protection has been followed by pressures from industry lobby groups for ad hoc legislative action, or for the use of grey area measures, to achieve the same ends. U.S.

experts have noted that "in recent years, most successful import quota campaigns have been preceded by dumping or subsidy cases producing eye-catching margins." [3] The GATT reports that "in one case, the action taken changed from an industry-to-industry arrangement to an Article XIX action and then to a VER." [4] The pursuit of safeguard protection appears to be part of a pattern of activities pursued by industries in an attempt to insulate themselves from international competition by whatever means available, rather than to provide the short-term relief from changed economic circumstances envisaged by Article XIX. The relative ease with which barriers to imports can be erected, particularly when the rules of Article XIX are sidestepped, makes them preferable to other policy alternatives. The fact that safeguard measures can employ existing administrative structures such as customs systems and often involve little or no financial outlays by government contributes to the tendency toward greater reliance on this kind of trade protection.

The Scope of Safeguard Protection

Assessing the overall impact of safeguard measures is greatly complicated by the methodological limitations inherent in comparing the effects of tariffs, quotas and other instruments on trade and production. As noted by the OECD (1985), equivalency between the effects of these measures depends on demand and supply conditions in the markets in which they are implemented. Moreover, the

restrictiveness of some measures, particularly Qks, varies over time with cyclical shifts in relative costs and demand.^[5]

Nevertheless, it is possible to gain some idea of the objective importance of safeguard protection in terms of world trade flows. While estimates of the trade coverage of safeguard measures alone are not available, a variety of estimates exist on the percentage of trade covered by quantitative restrictions and NTBs generally. A majority of the QRs and other NTBs examined by the OECD study fall under the definition of safeguard measures used in this study. While the estimates of trade coverage do not permit conclusions as to the restrictiveness of the measures, they do give an indication of their extent.

In terms of the overall extent of protection, the OECD, using a rather narrow definition of NTBs, which sweeps in mainly discriminatory QRs, concluded that "the share of restricted products in total manufactured imports increased over the period 1980-83 from 6 per cent to 13 per cent for the United States and from 11 per cent to 15 per cent for the EEC."^[6] In addition, OECD found that for the United States, the EEC and Japan taken together, by 1983 "the product groups subject to restriction accounted around 30 per cent of total manufactured consumption in the countries covered, up from 20 per cent from 1980." The latter figure takes into account the potential effects of restrictions in any one product group on all trade in that product group.^[7]

A study by Hufbauer and Rosen (1986) casts the effects of "special protection" in terms of total U.S. imports.^[8] While this study includes, in addition to the safeguard measures which are the focus of this paper, standing protection such as exceptionally high tariffs as well as textile and clothing restraints, the effects of safeguard measures as defined in this paper represent the major proportion of the overall effects identified by Hufbauer and Rosen (Safeguards account for 13 of the 23 cases identified in the manufacturing sector, including the U.S.- Japan automobile VER, by far the largest case in terms of import value.) "Special protection" is estimated to have reduced imports by \$44.4 billion in 1984, or 13% of total U.S. imports. Over one-fifth of total U.S. imports are estimated to have been covered by "special protection" in 1984, up from just 8% in 1975. The average tariff equivalent of these measures is 20%. The costs to U.S. consumers, estimated at \$53.4 billion, are enormous. Transfers to foreign exporters through the allocation of quota rents (discussed in Chapter 3 below) amount to \$7.6 billion annually. The overall picture of "special protection" is one of a significant and growing impact on U.S. trade and economic performance, in which safeguard actions play a major role.

The OECD study notes the spread of trade restrictions in recent years to new sectors, including relatively less protected sectors such as automobiles, machine tools and consumer electronics. This phenomenon is especially true of safeguard actions. Table 1.1 shows the distribution of safeguard actions, for 15 major industry

TABLE 1.1

NUMBER OF SAFEGUARD ACTIONS BY INDUSTRY OVER TIME

	1950 -54	1955 -59	1960 -64	1965 -69	1970 -74	1975 -79	1980 -84	1985 -87	Total 1950-87	In place in 1987
Agriculture	1	2	1	3	3	5	5	3	23	4
Fish., Log., and Mining	0	2	2	0	0	1	0	0	5	1
Food	1	1	1	3	0	7	18	9	40	19
Leather and Rubber	0	1	0	1	1	11	7	2	23	9
Textiles	0	2	4	3	1	11	8	13	42	20
Clothing	2	0	0	2	2	7	0	9	22	12
Wood, Furn., and Paper	0	1	0	0	0	2	0	2	5	1
Primary and Fab. Metal	0	1	3	3	0	14	6	10	37	15
Machinery and Equip.	0	0	1	0	1	0	1	6	9	6
Transp. Equip.	0	0	0	1	1	6	7	3	18	15
Electrical and Electr.	0	1	1	0	3	6	11	3	25	13
Non-Metallic Min. Prod.	0	1	3	0	2	0	1	2	9	3
Chemicals + Chem. Prod.	0	0	2	2	0	0	0	2	6	3
Scientific and Prof.	0	1	0	0	0	1	1	0	3	1
Other Mfg.	0	2	0	0	1	1	0	1	5	1
TOTAL	4	15	18	18	15	72	65	65	272	123

Source: Appendix A.

groups over time.^[9] For the period 1950-54, only 3 of the 15 industry groups, agriculture, food and clothing, were subject to safeguard actions. By the early 1970s, however, the scope of safeguard action had increased markedly, with 9 of the 15 industry groups experiencing new safeguard actions over the period 1970-74. From 1975-79, the first period for which data on actions taken outside Article XIX are widely available, 12 industry groups were subjected to new safeguard actions. By 1987, at least one safeguard action was in place in all 15 major industry groups, and 8 of the industry groups were subjected to 6 or more actions.

The significance of safeguard actions can also be judged from their effects on trade flows in the specific sectors in which they are used. Hufbauer and Rosen calculate the induced decrease in imports for each of some fifteen instances of safeguard protection. Expressing this induced decrease as a percentage of the actual import level in the final (or most recent) year of protection gives a rough indication of how much more trade would have occurred in the absence of protection.^[10] The difference ranges from just 3% for relatively minor cases such as bolts, nuts and screws (1979-82) and ball bearings (1974-78) to almost 20% for the safeguard action in the much more significant automobile sector and nearly 30% for actions in the steel sector. The OECD study reports similar estimates of the trade effects of these two U.S. safeguard actions. In the case of some highly restrictive actions, such as the U.S. action on CB radios, the

magnitude of trade flows in the absence of safeguard measures could have been more than twice as great as the actual levels, based on Hufbauer and Rosen's estimates.

In addition to affecting the magnitude of trade flows, safeguard actions can influence trade and investment patterns. In the case of the Australian market-sharing regime for passenger cars, the OECD reports marked effects on trade composition: up to one-third of the 100% increase in market share for light trucks and four-wheel drive vehicles from 1979-83 can be attributed to the fact that these vehicles were not covered by import quotas.^[11] The impact of the U.S. orderly marketing agreement on Japanese colour televisions, according to analysis by the OECD Secretariat, fell not on import demand or supply but on the pattern of import sourcing and, ultimately, on investment. Japan's import share went from 80-90% in the two years preceding the measure to 50% in the first full year of its operation, while the share of South Korea and Taiwan went from 15% to 50%. Following the extension of import restrictions to the latter two countries, Japanese producers entered the U.S. market through investments in local production whose output accounted for 25% of U.S. consumption.^[12] Similar responses have been observed in the case of U.S. VERs against Japanese automobiles.^[13]

In summary, the scope of safeguard protection is such that a significant portion of the total trade of the major invoking countries is affected. The coverage of safeguards has spread to an

increasingly wider range of sectors, including previously less-protected sectors such as automobiles and consumer electronics. Within each protected industry, safeguard measures can have a pronounced effect on the evolution of trade flows, in terms of magnitude, composition, and supplier countries, as well as on investment. Overall, safeguard actions must be judged to have a significant and growing negative influence on the development of world trade.

Safeguards and Structural Adjustment

The contribution of safeguard measures, both grey area measures and those sanctioned by GATT Article XIX, to the growth of protectionism in the trade system has been particularly harmful due to relationship between safeguards and structural adjustment. Structural adjustment is the process by which economic resources are re-allocated within and between industries in response to changes in economic signals, such as those stemming from technological developments, the emergence of new suppliers and competitors, and changes in government policies, including trade liberalization. Often, the justification for imposing safeguards is to allow a domestic industry time to adjust to changes in the international marketplace; indeed, most experts consider that Article XIX is intended to provide for a period of adjustment. Yet in practice, safeguard protection tends to remove the incentives for adjustment by masking the market signals that provide firms and workers in

declining industries with the information required to seek out alternative, more favourable economic opportunities.

Put another way, safeguards provide the wherewithal - in the form of special protection against international competition for domestic producers, leading to artificially higher wages, prices and returns to existing investment - to avoid the inherently risky process of adjusting to structural changes in the global economy. The static economic costs of safeguard protection to the domestic economy as a whole constitute a transfer to specific protected sectors that is intended to alleviate the difficulty of adjustment to change during a transitional period. But as one study noted, "while adjustment occasionally points to the end of special protection, in far more cases protection endures indefinitely, or is brought to an end only by the happenstance of cyclical revival."^[14] There exists in national policymaking processes a strong tendency for safeguards to become permanent. The transfer to specific sectors at the cost of the economy as a whole can therefore persist without necessarily producing the desired adjustment.

In addition to the static costs of safeguard protection, the link between safeguards and adjustment has important dynamic implications. The pursuit of safeguard protection can operate as an alternative to the re-allocation of economic resources between industries that is crucial to economic growth in a rapidly changing global economy. The availability of this alternative means that the

rewards to innovation and restructuring of economic activities, whether in the technology of production, in management techniques or in other spheres, are thereby rendered relatively less attractive to firms and workers. Constraints on productivity growth as a result of safeguards and other forms of protection afforded to declining industries are an important part of the explanation for the relatively slower overall economic performance experienced by the industrialized countries in the 1980's compared to previous decades.^[15] Even some of the more interventionist solutions to the problem of slower growth have acknowledged that eliminating protection is "one of the essential ingredients in any successful program for stimulating economic growth"^[16]

Multilateral Negotiations on Safeguards

Attempts to strengthen the trade system in the Tokyo Round of multilateral trade negotiations included as a prominent feature negotiations aimed at concluding a new code on safeguards. As Winham, (1986) notes, "it had been apparent for some time that Article 19 was not accomplishing the purposes for which it had been intended."^[17] The increasing resort to grey area measures outside the GATT framework had demonstrated the inadequacy of the GATT safeguard provision. While it proved possible to address other gaps in international trade rules by building upon pre-existing GATT rules, for example in the areas of anti-dumping and subsidy/countervail, the safeguards negotiations produced no

agreement.^[18] The lack of a new safeguards code was perceived by many as a major failure of the Tokyo Round negotiations:

By common consent, the largest single failure of the Tokyo Round was the inability of the major trading countries to agree on a revised safeguard clause for GATT....

Miriam Camps and William Diebold Jr., The New Multilateralism, 1983.

The GATT safeguard provision...needs to be rescued from desuetude and the contagion of so-called voluntary export restraints brought to an end.

Arthur Dunkel, Director-General of GATT, speech on "International Trade and Economic Growth", February, 1984.

We have failed to achieve agreement on a new comprehensive approach to safeguards, in part because of public concerns about the adjustment problems in our basic industries.

Office of the United States Trade Representative, "Concept Paper on New Multilateral Trade Negotiations", 1984

...[F]urther understandings on the rules and disciplines governing the use of such safeguard actions...continues to be the major item of unfinished business remaining from the Tokyo Round.

A Review of Canadian Trade Policy, 1983.

The new round of multilateral trade negotiations launched at Punta Del Este, Uruguay, in September, 1986 will address the safeguards issue as a matter of priority. The Group Negotiating on Goods (GNG) set up within GATT as part of the new round noted at one of its first meetings that a "comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations."^[19] The urgency of the need for progress on the safeguards issue is perhaps best illustrated by the fact that the number of grey area measures

identified by the GATT Secretariat rose from 93 to 116 in the six months immediately following the Ministers' meeting in Uruguay. The function of past rounds of multilateral trade negotiations in dampening protectionist pressures from domestic constituencies^[20] now appears to be at risk in the area of safeguards. Some observers of the launching of the new round placed safeguards at the top of the list of issues that will test the collective will of trading nations to resist the drift away from the liberal principles of international trade that have underpinned the post-war system toward a new era of "managed trade".^[21]

Overview

The purpose of this paper is fourfold: to examine the role of safeguards provisions in international trade agreements; to analyze actual experience with safeguards in the multilateral trade system; to review past attempts to negotiate improved multilateral rules governing the use of safeguards; and to suggest key considerations for future negotiations aimed at new, effective disciplines on the use of safeguard measures.

The thesis of the paper is straightforward. The provisions of Article XIX of the GATT provides inadequate multilateral restraint on domestic pressures for safeguard measures. These measures are damaging to national economies and to international relations, but domestic political pressures favour their use and maintenance. A new

approach to multilateral discipline on safeguard is therefore needed, but several recent attempts to negotiate safeguard rules have been unsuccessful. In order to be effective, a new approach must take into account past and on-going changes in the international system, including the development of GATT rules since 1947, the rise of new, complex, and diverse forms of protectionism, and, most importantly, the domestic structural adjustment problems that underlie the use of safeguards.

Chapter 2 will review in detail the origin and rationale of the existing rules on safeguards and examine their relevance to current problems in the international trade system and to the framework of obligations that has developed under GATT auspices. Chapter 3 will describe recent experience with the use of safeguards and identify some of the aspects of that experience relevant to the problem of improving multilateral discipline over safeguards. Analysis of the economic costs of various types of safeguard measures and the political-economic dynamics associated with their use will be brought to bear in support of the case for treating the safeguards issue as fundamentally one of dealing with adjustment pressures in the domestic economies of trading nations - and as a priority for the Uruguay Round. Chapter 4 will review the history of past attempts to negotiate multilateral disciplines on safeguards. The conclusions presented in Chapter 5 will focus on some key elements of any new disciplines over safeguards necessary in order to deal with the adjustment issue.

Several important categories of problems in the international trade system related to the safeguards issue will not be covered in any detail in this paper. First, the paper does not for the most part deal with the negotiating issues and trade relations problems created by current standing measures of protection. These include the quantitative restrictions maintained by many industrialized countries on agricultural products, the high tariffs that remain in several product areas despite 40 years of GATT tariff reductions, escalating tariff protection on the processed forms of many raw materials, the trade and economic systems of state-trading countries generally, and the growing recourse by many countries to counter-trade or barter. The reduction of standing protection involves an exchange of concessions that is fundamentally different from that required in order to introduce discipline over the introduction of additional protection, as in the case of safeguards.

Second, the paper focuses on Article XIX actions and on the grey area measures that are substituted for them, rather than on the other "escapes" from general GATT obligations that are built into the General Agreement.^[22] These pertain, principally, to balance of payments problems (Article XII); economic development in less developed countries (LDCs) (Article XVIII); quantitative restrictions and export subsidies on agricultural products (Article XI, paragraph 2 and Article XVI, paragraph 4); general exceptions, such as actions relating to public safety and morals (Article XX); and national security (Article XXI). Article XXV also provides for the granting

of special waivers from GATT obligations on the basis of a two-thirds majority vote of the Contracting Parties, and Article XXVIII provides for renegotiation of tariff concessions with the agreement of the countries concerned. While certain of these "escapes" have given rise to strains in the trading system as serious as those related to Article XIX, they present diverse negotiating problems and the discussion of them is a matter for a broader inquiry.

Finally, the paper will not discuss in any great detail the network of quantitative restrictions maintained by industrialized countries on imports of textile and clothing products from "low-cost" developing countries under the Multi-Fibre Arrangement (MFA). While the MFA is not formally a part of the General Agreement, it operates within the framework of GATT and amounts to a multilaterally sanctioned agreement to set aside the basic GATT principles of trade liberalization and non-discrimination, as well as the safeguard provisions of Article XIX. The MFA is in effect an umbrella agreement permitting bilaterally negotiated agreements on these products, and contains special rules, conditions, rights and obligations to govern them. Textiles and clothing trade has been effectively excluded from general GATT disciplines by the MFA and its predecessor arrangements for 25 years, and is in a sense subject to trade protection that is as much standing as contingent in nature. While the protection afforded by import restrictions under the MFA is similar in many respects to that provided by safeguard protection, and indeed stands as an object lesson of what could transpire in

other sectors, the whole question of how to re-integrate textiles and clothing trade into GATT is quite distinct. A separate Negotiating Group in the Uruguay Round has been set up for this purpose, with a negotiating plan that is quite different than that of the Negotiating Group on Safeguards.

CHAPTER 2: THE ORIGIN OF ARTICLE XIX AND ITS ROLE IN THE GATT SYSTEM

The purpose of this chapter is to describe Article XIX of the GATT and review its provisions in the context of the functions of the GATT system under which the majority of world trade is conducted. The focus in this chapter is on the legal character of the system established under Article XIX, i.e., on the nature of the rights and obligations by which members are bound. Chapter 3 will examine actual experience with safeguard actions in recent years from an economic and political-economic perspective.

Origins of Article XIX

Article XIX of the General Agreement is commonly known as the "escape clause", a term taken from U.S. trade law, because it allows a member country to escape from its normal GATT obligations under certain circumstances.^[1] The concept of an escape clause is peculiarly American, and has its origins in the bilateral agreement negotiated between the U.S. and Mexico in 1942. That agreement contained the following provision:

If, as a result of unforeseen developments and of the concession granted on any article enumerated and described in the Schedules annexed to this Agreement, such article is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or similar articles, the Government of either country shall be free to withdraw the concession, in whole or in part, or to modify it to the extent and for such time as may be necessary to prevent such injury.^[2]

This clause was the model for the escape clause included in the Charter of the International Trade Organization (ITO), the comprehensive institution whose establishment was contemplated at the end of the Second World War as the third part of the multilateral economic system comprising the International Monetary fund (IMF) and the International Bank for Reconstruction and Development (IBRD, or more commonly the World Bank). The U.S.-Mexico clause also served as the basis for a 1947 Executive Order by the U.S. Administration requiring that all new trade agreements entered into by the U.S. would contain an escape clause. Both its inclusion in the proposed ITO Charter and the Executive Order were in response to complaints regarding injury to domestic industries as a result of previous trade agreements in the 1930s under the Reciprocal Trade Agreements Act. These complaints had surfaced in the Congressional debates and hearings on the issue of U.S. participation in GATT, and on the simultaneous preparations for the negotiations on the ITO. It was felt by the Administration that an escape clause was therefore a prerequisite to its acceptance of the Charter as well as the GATT, which was intended as an interim document to be superseded by the ratification of the Charter.^[3]

In the event, the ITO Charter was never ratified. Opposition from various groups in the U.S., together with the fact that many U.S. objectives had been achieved in the General Agreement and the accompanying tariff concessions, encouraged the Administration to

withdraw ratification of the Charter from its legislative program. Other countries took no action to ratify it when it became clear that the U.S. would not do likewise.^[4] In the meantime, however, the 23 original Contracting Parties had entered into the General Agreement, which essentially consisted of Chapter 4 of the ITO Charter, by means of the Protocol of Provisional Application. This was an interim vehicle to permit negotiations on tariff reduction to take place simultaneously with the consideration of the ITO Charter. The result was that the GATT came to stand alone as the central element in the multilateral trade system. As a consequence, the organizational infrastructure and resources that had been envisaged for the ITO were lacking in GATT from the outset.

Institutionally, the GATT is still relatively weak compared to the IMF and the World Bank, the other main international economic organizations under the post-war multilateral system. The General Agreement makes no formal provision for a Secretariat, in spite of the clear operational requirement for professional staff; the main provision for an institutional form is the reference in Article XXV to the "contracting parties acting jointly" being designated as the "CONTRACTING PARTIES".^[5] Indeed, the fiction was maintained for some time, particularly by the U.S. Executive Branch, that the GATT was not an international organization per se.^[6]

As Stone (1984) suggests, it may be that "the absence of a rigid and formalized institutional structure has been one of the strengths

of the GATT system, permitting it to respond more easily and flexibly to the changing conditions of world trade".^[7] The nature of such flexibility is particularly important as regards rules governing safeguard actions, which are, fundamentally, national policy responses to changed conditions in international trade.

The outcome of the Tokyo Round imposed new responsibilities on the GATT as an institution, and its resources and personnel base has been strengthened somewhat as a result. That more remains to be done in this regard is clear from the establishment of a Negotiating Group on the Functioning of the GATT System as part of the Uruguay Round. As we shall see below, improved discipline over safeguards may depend critically on redressing the institutional inadequacies of GATT that stem from its origins as a temporary device pending the coming into force of the ITO. The weakness of the provisions for notification and surveillance in Article XIX may be the most useful feature of a new agreement on safeguards.

In substantive terms, the end of the ITO per se is not itself germane to the safeguards issue, since the safeguard provisions and indeed most of the other trade provisions of the much broader ITO were carried over into GATT. However, it is interesting to observe that nowhere among the many trenchant criticisms of the ITO Charter, principally in the U.S., does one find that fault was found with its safeguard provision, which was virtually identical to that in the General Agreement. Although the Charter was widely criticized for

having been shot full of holes during the negotiating conferences leading up to the final drafting session in Havana, its safeguard provision was not among "the provisions which the critics of the Charter, in the United States, have in mind when they have complained that the document is riddled with escapes."^[8]

Later critical commentaries on the GATT also failed to place much emphasis on Article XIX as a weak spot in the overall framework of rules. While a GATT report issued in 1963 suggested that a reexamination of Article XIX was required, no work was done to follow up on it. A leading scholarly work on the GATT written in 1968 expressed the view that "the escape clause has been invoked relatively seldom, and therefore it is doubtful that a case for deletion of this safeguard clause can be made out."^[9] As the quotes given in Chapter 1 indicate, and we shall see below, experience with safeguard action in recent years has focused attention on GATT's safeguard rules as a weak spot in the General Agreement, and its strengthening a matter of urgent priority.

The Main Elements of Article XIX

The principal provision of Article XIX of the General Agreement, paragraph 1 a), bears a close resemblance to its predecessor in the U.S. - Mexico agreement.

If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

As Jackson (1969) suggests, this language is "extraordinarily oblique, even for GATT language".^[10] In essence, however, it can be broken into the conditions or circumstances in which the article can be invoked, and the safeguard measures that can be taken once these prerequisites are met. The four conditions specified are 1) that there must have been an increase in imports, that the increase resulted from 2) unforeseen developments and 3) the effect of GATT obligations, and 4) that the increased imports must cause or threaten serious injury. The safeguard measures allowed under these conditions are the withdrawal or modification of GATT concessions, subject to the requirements 1) that the obligations withdrawn must relate causally to the increase in imports, 2) that the withdrawal be made only to the extent and for the period necessary to remedy the injury, and 3) that the withdrawal be only in respect of the product causing the injury.

A fourth requirement, that the withdrawal shall be on an MFN basis, is also present in the opinion of most experts and in actual GATT practice. The obligations that may be suspended under an

Article XIX action do not include the MFN obligation set out in Article I of the General Agreement. Although it is not explicitly set out in Article XIX itself nor implied directly by its construction, the interpretation that safeguard actions may be taken on an MFN basis only is supported by a report from an ad hoc GATT committee.^[11] Thus, even where the condition of a causal relationship between increased imports and injury to a domestic industry is satisfied only with respect to certain trading partners, the remedy must be applied to all imports.

The logical rationale for this requirement, according to Dam, (1970), is that the general arguments against discriminatory tariffs that underlie Article I "apply as fully to Article XIX increases as to any other increases."^[12] Those arguments, which are reviewed in more detail in Chapters 3 and 5 below, can be summarized as follows:^[13]

- For a given level of tariff protection, non-discrimination promotes the most efficient allocation of resources internationally, by allowing the price mechanism to function as between different sources of imports;
- Non-discrimination provides greater fairness in international trade relations by attenuating the influence of a nation's size or power (or lack thereof) relative to its trading partners on the conduct of trade policy;

- By requiring countries to multilateralize trade concessions negotiated bilaterally, the non-discrimination rule acts as an automatic mechanism for the extension of trade liberalization;
- Non-discrimination ensures that a country entering into negotiations with its trading partners under GATT auspices gets the "best available deal"; and
- Transparency and simplicity of administration are increased by requiring that countries treat all trading partners equally.

In addition, the MFN requirement was regarded as a method of discouraging the use of Article XIX.

Article XIX also contains, in paragraphs 2 and 3, a set of procedures governing the use of safeguard actions and specifying certain rights and obligations of the importing and exporting countries consequent upon such actions:

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Contracting Parties as far in advance as may be practicable and shall afford the Contracting Parties and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action.... In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Contracting Parties, the application to the trade of the contracting party taking such action...of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the Contracting Parties do not disapprove.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

Basically, these procedures require the importing country taking the safeguard action to 1) provide written notice to the Contracting Parties and 2) to consult with the Contracting Parties and with affected exporting countries, defined as those with a substantial interest as exporters of the product concerned. These consultations may lead to agreement on either compensatory concessions to be made by the country invoking Article XIX, or compensatory withdrawal of concessions to be made by the affected exporting countries. An exception to the obligation to consult is made in critical circumstances where the attendant delay would cause damage difficult to repair for the invoking country.

Should the consultations not lead to an agreement, the importing country is free to proceed with the action, and the affected exporting countries then acquire rights to respond by withdrawing concessions of their own in respect of the trade of the invoking country. The procedures require that this retaliatory action by exporting countries 1) be notified in writing thirty days in advance and 2) not meet with the disapproval of the Contracting Parties.^[14] An exception to the obligation to provide written notice is made in circumstances where the action by the invoking country was taken without prior consultation and where delaying the retaliatory action would cause damage difficult to repair for an affected exporting country.

The provisions of Article XIX governing retaliatory actions contain a substantive element of some interest pertaining to the GATT principle of MFN treatment. Paragraph 3 a) gives affected exporting countries the right to apply retaliatory measures exclusively to the trade of the contracting party taking the original safeguard action, i.e., in a discriminatory fashion. This contrasts with the provisions of paragraph 1 a) governing the original safeguard action, which according to the generally accepted interpretation requires that action be taken on an MFN basis. Paragraph 3 b), however, governing emergency retaliation, requires that retaliatory action be taken on an MFN basis.

According to Dam (1970), the non-application of the MFN principle to "ordinary" retaliatory action is reflective of the punitive nature of retaliation and of the risk that retaliation on an MFN basis would lead to a chain reaction of further increases in trade barriers by third countries.^[15] In the case of emergency retaliation, however, where the Contracting Parties have not had the opportunity to pass judgement on the proposed retaliatory action and hence on the appropriateness of not applying the MFN principle, Article XIX requires that retaliation be on a nondiscriminatory basis. The construction of the article, in Dam's view, is a practical, logically consistent solution to the rather delicate problem of how to reconcile the larger principle of MFN treatment to the limited purposes of the escape clause.

Much less logical is the lack of any provision in Article XIX preventing the MFN principle from being compromised in a de facto sense through the design of the protective measures employed.^[16] Import restrictions used as safeguard measures can be imposed on a product or group of products defined in such a way as to ensure that those covered are in fact available from only one or a few countries. One commonly used practice, the application of restrictions only to imports below (or above) certain price thresholds, can have a substantially discriminatory effect in terms of the suppliers affected. Similarly, the determination of base levels for quotas that are allocated on a country-by-country basis can often be influenced decisively by the selection of the base period. For

example, where one or a few suppliers have exported for a relatively short period only, their share of an overall quota level will be disproportionately smaller the longer the base period. Such actions may be entirely consistent with Article XIX in a de jure sense but discriminatory in application for all practical purposes.

The Role of Article XIX in the GATT System

Once the oblique language used to convey them is examined closely, the provisions of Article XIX are fairly easily understood in terms of their legal form. The relevance of these safeguard rules, however, goes well beyond the fairly straightforward conditions, rights and obligations that are set out explicitly in the text of the General Agreement. The way in which they govern - and fail to govern - the use of safeguard measures by GATT members has broader implications that bear importantly on the basic functions of the GATT system.

The GATT system has five basic functions:^[17]

- It is a treaty embodying agreed rules;
- It serves as a framework for trade liberalization;
- It provides a forum for consultation;
- It provides facilities for dispute settlement; and
- It provides facilities for information gathering, dissemination and research.

The foremost of these functions is that of a multilateral treaty among most of the major trading nations constituting a framework of multilaterally agreed rules for the conduct of international trade, embodied in the General Agreement and the supplementary codes and agreements negotiated by some members within the GATT framework. The rules constrain and discipline the trade policies of member countries, govern their trade relations with one another, and give effect to the results of successive rounds of trade negotiations.

Perhaps the most visibly successful function of the GATT system is the provision of a framework for trade liberalization, through negotiations aimed at lowering the tariffs of member countries and exchanging commitments not to increase these tariffs, and at prohibiting or controlling the use of other non-tariff barriers to trade. This function is exercised for the most part through rounds of multilateral trade negotiations. The Uruguay Round now underway is the eighth of these negotiating conferences to take place since the inception of GATT.

The three other distinct functions listed above are primarily procedural in nature. The system provides a permanent framework for continuing consultations on trade and trade policy developments and practices of member countries; facilities and procedures for the resolution of trade disputes among member countries; and facilities for collecting and disseminating information about developments in world trade and the trade policies of member countries, as well as

for independent research and analysis of trade policy issues. As we shall see below, these procedural functions are particularly important to the development of improved disciplines over safeguards.

How do the safeguard rules of Article XIX relate to these functions of the larger GATT system? Each of the five functions will be considered in turn.

Article XIX and the GATT Framework of Rules

Article XIX confers a conditional and limited right to derogate from more general GATT principles governing international trade. Countries that have taken on the obligations of the General Agreement are allowed a degree of flexibility to use safeguard measures where these international obligations have created difficulties in their domestic economies and where these difficulties are the result of "unforeseen developments". This is intended to provide assurances to domestic producers that the international agreement entered into by their government will not combine with other events not taken into account at the time the agreement was signed to produce serious injury to their interests. In a sense, Article XIX is an attempt to ensure that the rules embodied in the General Agreement do not become obsolete in the view of important domestic constituencies in member countries. The rationale, as illustrated by the above discussion of the origins of Article XIX, is to deflect opposition to progressive trade liberalization under international rules.

Analogies may be drawn between Article XIX and the broad principle of "changed circumstances" in public international law. International treaties are in general subject to the doctrine known as rebus sic stantibus, codified in Article 62 of the Vienna Convention on the Law of Treaties:

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from [or suspending the operation of] the treaty unless:

a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. ^[18]

The intent of this doctrine, like that of Article XIX, is to provide some flexibility with respect to the obligations undertaken by countries under international treaties. However, Article XIX is much broader in scope than the general principle. The latter requires that the unforeseen developments that give rise to the action to terminate or suspend obligations be fundamental and an essential basis of the consent of the parties to a treaty. Article XIX, on the other hand, does not require that there be a fundamental or essential change in the circumstances prevailing at the time obligations were undertaken, only that an increase in imports has occurred as a result of a change that was not foreseen. Moreover, the principle of changed circumstances is not applicable under the Vienna Convention to the most basic object of public international

law, namely the establishment of national boundaries (paragraph 2 a) of Article 62). By comparison, there is no restriction of the application of Article XIX, so that the tariff concessions and other basic liberalizing elements which are the basic object of the GATT are all open to modification. Finally, Article XIX confers a positive right of derogation on GATT members provided the conditions specified are met, while the general principle is codified in the negative, so as to prohibit the termination or suspension of obligations except in the specified circumstances.

Dam (1970) argues that the broader scope of Article XIX is justified by the need to encourage "cautious countries to enter into a greater number of tariff bindings than would otherwise be the case."^[19] The history of the ITO and the GATT would seem to indicate that the presence of an escape clause was indeed necessary to the original participation of the U.S. in the early post-war conferences on international trade. However, it is not readily apparent why an especially broad escape clause was necessary for this purpose. More importantly, the role of Article XIX in encouraging tariff concessions in later periods and by other, ostensibly "cautious" countries is not at all clear. On the contrary, many developing countries have argued that more tightly constrained GATT safeguard rules are needed if the benefits of making concessions in GATT rounds are to be apparent to them.^[20]

While the text of Article XIX itself provides no definition of the term "unforeseen developments", the record of GATT jurisprudence offers some guidance. A decision by the U.S. in 1950 to withdraw a tariff concession on women's fur felt hats and hat bodies negotiated during the first GATT round in Geneva prompted a challenge by Czechoslovakia, and a GATT Working Party was set up. The subsequent report provided an early, uniquely detailed and highly legalistic record of an interpretation by the Contracting Parties of Article XIX.

One of the major points at issue in the deliberations was the question of whether the fashion change in ladies' hats that had resulted in an increase in imports into the U.S. was in the nature of an unforeseen development. All the members of the Working Party except the U.S. agreed that " 'it is universally known that fashions are subject to constant changes' and that the United States negotiators should have known that fashions might change" at the time the tariff concession was negotiated.^[21] However, the Working Party members, with the exception of Czechoslovakia, went on to conclude that "the degree to which the change in fashion affected the competitive situation, could not reasonably be expected to have been foreseen by the United States' authorities in 1947", and that this change was therefore an unforeseen development in the sense intended by the Contracting Parties in the drafting of Article XIX.^[22]

The effect of this decision was to render the unforeseen developments requirement of Article XIX something of a dead letter. For if it is only the degree to which a development has affected the competitive situation in the marketplace that must be unforeseen, it could be construed in almost any case that the mere fact of an increase in imports gives rise to a potential action under Article XIX to limit imports: the changes in levels of imports consequent upon trade liberalization are virtually always unforeseeable to a significant extent. In effect, "there may be built into GATT obligations through the escape clause a limit to the allowable increase of imports of any product."^[23]

The coherence of the framework of rules that is constituted by the General Agreement is seriously compromised by Article XIX. While there are valid reasons to ensure that the framework is flexible to a degree, there is no clear reason why the GATT need be quite so flexible as the safeguard rules have made it. Indeed, there would appear to be a basic conflict between the interpretation of the unforeseen developments requirement of Article XIX and the overall objective of expanding international trade set out in the preamble to the General Agreement.

Article XIX may also be criticized in the context of the GATT framework of rules on the grounds that it is insufficiently specific as to at least three important matters. First, the definition of what constitutes "serious injury" is left entirely open by the text

of the article. The Working Party in the Hatters' Fur Case, after much discussion and weighing of statistical evidence, came to the view that the determination of serious injury "is essentially a matter of economic and social judgement involving a considerable subjective element."^[24] In actual practice, this key condition for multilateral sanctioning of safeguard action is decided unilaterally in accordance with national legislation or administrative procedures. The burden of proof on the question of serious injury was placed on the complainant exporting country in the Hatters' Fur Case, in spite of the obvious difficulty of obtaining the necessary detailed evidence on a foreign industry. The effect of this practice is to broaden access to safeguard protection under GATT and to weaken the standard of multilateral surveillance applied.

Second, Article XIX contains no effective restrictions on the form of allowable safeguard actions. By permitting the withdrawal of previously negotiated concessions or the suspension of other GATT obligations, the article effectively countenances the use of a very wide variety of trade restrictions. This broad scope for safeguard actions is subject only to the implicit rule that actions not be taken on a discriminatory basis. However, as noted above, the restrictive measures employed to provide safeguard protection can be designed to be discriminatory in effect while ostensibly implemented on an MFN basis.

Third, there is no definite restriction in Article XIX on the allowable duration of a safeguard measure. As with the determination of injury, the wording used - "for such time as may be necessary to prevent or remedy such injury" - effectively leaves the decision as to the duration of the measure entirely open to the discretion of the invoking country. In addition, Article XIX does not constrain countries from applying safeguard protection repeatedly in the same or related sectors. The absence of provisions relating to duration and repeated incidence means that the extension of safeguard actions over time is not subject to multilateral discipline.

Article XIX and the GATT as a Framework for Trade Liberalization

One of the most elegant features of the General Agreement is that it is not itself the major embodiment of the trade liberalizing undertakings of member countries. Rather, it merely sets out basic ground rules for the conduct of international trade, and leaves most of the substantive concessions to be worked out between member countries on the basis of mutual reciprocity. In the case of tariffs, the concessions are expressed by means of schedules which are attached to and become integral parts of the General Agreement as and when they are negotiated. The Tokyo Agreement agreements aimed at liberalizing non-tariff barriers take the form of supplementary codes which add to rather than modify the General Agreement. Agreement on new liberalizing measures does not, therefore, entail the reestablishment and re-codification of the entire balanced

exchange of concessions that make up the GATT system. In this way, trade liberalization between countries over the past four decades has progressed incrementally, guided and encouraged by the common set of principles originally set out in the General Agreement.

The rationale for Article XIX in terms of the trade liberalization function of the GATT system is to help ensure that the balance of concessions established through negotiations continues to be viewed by participating governments as a fair exchange in spite of the occurrence of unforeseen developments. By redressing the inequities created by unexpected changes in trading patterns, Article XIX actions in theory serve to maintain the reciprocity that formed the basis for the original concessions by the parties to a multilateral negotiation. The legitimacy and efficacy of the GATT system, and hence the interest of countries in engaging in further trade liberalization, is intended to be enhanced by this mechanism.

However, the provisions of Article XIX allow countries to implement safeguard measures without requiring that they have the effect of redressing any imbalances that may have arisen as between trading partners.^[25] The consultations required under paragraph 3 may produce agreement on compensatory concessions by the country taking the action that results in all the restoration of a balance of concessions between all interested parties, but this is not a necessary outcome. The invoking country may decide that no agreement is possible, leaving affected exporting countries to reestablish the

balance of concessions on their own, by means of retaliation. There is no obligation on the part of the invoking country to maintain the balance in the first instance.

Moreover, the required consultations may lead to an illiberal outcome, in the form of agreement on compensatory withdrawal of concessions by the affected exporting countries, as opposed to compensatory concessions by the invoking country. Not only does Article XIX provide for retaliation but it also fails to encourage countries to direct their efforts to avoid retaliation in the direction of greater liberalization. This amounts to multilateral sanctioning of illiberal trade policies, in direct contradiction to one of the main functions of GATT. Moreover, while past practice has sometimes led to liberalizing compensation in the form of tariff concessions by the invoking country, the offering of compensation way has been made more difficult by the progressive lowering of tariffs over time. Future tariff reductions would increase still further the likelihood that Article XIX actions will result in a re-balancing of concessions at a higher overall level of trade protection.

The consultation, compensation, and retaliation features of Article XIX also complicate the maintenance of a balance of concessions in more subtle ways. The lack of specificity regarding the type of actions which may be taken means that quotas may be used to retaliate against withdrawal of tariff concessions, for example. The provisions for emergency retaliation, which require that action

taken without prior notification to the Contracting Parties be on an MFN basis, can result in trade restrictions being imposed against countries which have no part in the imbalance that gave rise to the need for safeguard action.

Similarly, the requirement that the original safeguard action be taken on an MFN basis serves little purpose as regards the re-balancing of concessions, in spite of its clear justification on economic and political-economic grounds.^[26] Rarely does the country taking safeguard action view all of its trading partners as contributing - and contributing equally - to the inequity arising out of an increase in imports into its market. While there is logic to the requirement that safeguard actions be nondiscriminatory, as noted above, the complications it introduces into the balance of concessions operate to the disadvantage of the process of trade liberalization. Countries which in the opinion of all concerned parties have little to do with the problem being redressed are brought into the solution. The requirement for MFN application may serve to bring political pressure to bear on the invoking country to reconsider the use of a safeguard action, something which is otherwise somewhat lacking in the provisions of Article XIX. However, it also widens the area of application of both the original measure and the possibly illiberal compensatory or retaliatory consequences of any actions by trading partners.

In the broadest sense, the problem with Article XIX in terms of the GATT as a framework for trade liberalization is that it contributes to instability rather than stability in the balance of concessions among member countries, and allows for re-balancing of concessions at a higher level of overall trade protection. This problem was recognized by a 1963 GATT report which called for a reexamination of Article XIX with a view to obtaining greater stability of trade concessions, although no concerted follow-up was made by the Contracting Parties at that time.^[27] While there are other elements of GATT that can facilitate the stability of concessions, for example the provisions of Article XXVIII which allow countries to renegotiate previous tariff concessions with their trading partners, these have not been widely seen as applicable to the "emergency" situations for which Article XIX was intended. It is worth noting at this point that the negotiating plan on safeguards for the Uruguay Round links an agreement on safeguards to the broad progress of the multilateral trade negotiations, a clear indication of the continuing importance of enhancing the stability of concessions.

Article XIX and the Procedural Functions of the GATT System

The procedural functions of GATT are perhaps not so much ill-served by Article XIX as ignored. While the article does generally require notification to the Contracting Parties and provide for consultations with affected exporting countries, these procedures

have not been nearly so fully elaborated over time as those pertaining to other articles of the General Agreement. Experience with Article XXIII, for example, has created a large body of precedents, and procedural mechanisms for contingent protection measures such as subsidy/countervail and dumping have been extended and elaborated through multilateral negotiations. The procedural elements of Article XIX, on the other hand, have evolved relatively little since the early years of GATT and amendments to them have not as yet proved susceptible to multilateral agreement despite several serious attempts.

In practice, Article XIX actions do not seem to generate much formal procedural activity in GATT. Recourse to formal dispute settlement mechanisms is relatively rare for Article XIX actions as compared to other trade policy matters.^[28] The consultations function appears to have played a minor, largely informal role in most safeguard cases.^[29] The information gathering function of GATT gains little from Article XIX since neither invoking countries nor affected exporting countries are required to submit much in the way of documentation to support their respective positions, and neither party is obliged to take account of any specific information that may be to provided them.

While it is possible to take a sanguine view of the apparent disuse of formal procedural mechanisms of GATT in Article XIX cases and assume that they are simply not needed, there are at least two

reasons to take a more critical view. First, while the parties to a safeguard action may dispose of their respective obligations in a mutually satisfactory fashion without engaging to any great extent the available procedural mechanisms, opportunities may be missed for more positive, liberalizing contributions to the system. The rights and obligations of GATT members can usefully be viewed as process and procedures, rather than exclusively as a network of rules according to which disputes are arbitrated. From this perspective, the procedural functions of the GATT system help member states "to identify the common interest in complex situations and to formulate short-term policies for the achievement of long-term objectives."^[30]

Second, and more importantly, the disuse of GATT procedures in Article XIX cases reflects to a very great extent the circumvention of the GATT itself through the use of grey area measures, described in the next chapter. There has developed among even the most ardent supporters of liberal international trade a recognition that Article XIX is too costly and too cumbersome in terms of possible compensation or retaliation to constitute a consistently viable alternative for countries facing pressure from domestic industries for immediate and decisive safeguard measures. More "pragmatic" safeguard actions, usually involving measures aimed selectively at the most troublesome exporters and negotiated with them on a bilateral basis, are often preferred.

This preference tends to bring the GATT procedures into disrepute as methods of dealing with the sort of trade frictions that underlie safeguard action. Article XIX contains very little in the way of obligations to report on the specific grounds on which safeguard actions are taken or on their effects on the protected domestic industries. From the point of view of affected exporting countries, the lack of multilateral discipline over the implementation of Article XIX only serves to reinforce the attractiveness of agreeing to the use of bilaterally negotiated measures that conflict with GATT.

The effectiveness with which GATT fulfills its procedural functions has been limited by the relatively meagre resources provided to the GATT Secretariat. The tasks imposed on the Secretariat by the outcome of the Tokyo Round would overwhelm the small but adaptable group of officials that administered the GATT in its early years. The demands placed on the institutional infrastructure of GATT are likely to continue to increase, particularly in the area of safeguards. As Chapter 5 will demonstrate, revamping the safeguard rules of GATT will likely place a good deal of emphasis on monitoring and surveillance mechanisms.

Conclusion

Article XIX has its origins in U.S. trade law and in particular the U.S. concept of the need for an escape from the international

obligations undertaken in a trade agreement in the event that the domestic effects prove to be more than was bargained for. The implications of building into GATT as broad an exception as Article XIX worried very few of the early observers of the international trade system, and the article's construction seemed to satisfy the requirements of logic. The overriding concern was that countries negotiating a new world trade order should make certain that the more cautious among their number would be able to make trade-liberalizing concessions without fear of being undermined by subsequent unforeseen developments.

However, viewed in the context of the basic functions of the larger GATT system, significant flaws are inherent in the provisions of Article XIX. While it can be said of the General Agreement as a whole that it is necessarily imperfect and that certain of its functions, therefore, are better served than others, the examination above shows that Article XIX serves these functions especially poorly. The GATT framework of rules is seriously compromised by the degree of flexibility built into Article XIX; the exchange of concessions that is the basis of trade liberalization under GATT is rendered less stable; and incentives are created to ignore GATT procedures as the basis for handling trade frictions.

Finally, not only do the provisions of Article XIX operate to frustrate some GATT functions, but the prevalence of grey area measures that countries have seen fit to take in disregard of its

rules also reflects the growing strain on the GATT system itself. To put it another way, Article XIX is to be faulted both for what it is and for what it is not.

CHAPTER 3: SAFEGUARD MEASURES IN PRACTICE

This chapter analyzes past experience with safeguard actions in the multilateral trade system from an economic and political-economic perspective. The focus is on the effects of safeguard actions on the country taking the action, rather than on the exporting countries affected by the action. This emphasis reflects the fact that the reason for the existence of Article XIX -and for grey area measures as well - is the desire for a last resort to escape from obligations under a trade agreement when, from a country's point of view as an importer, those obligations become too onerous. This chapter will demonstrate that the use of safeguard actions is intimately linked to the process of structural adjustment, both in terms of the pressures that give rise to calls for safeguard protection and in terms of the economic consequences of the measures used to deliver it. New GATT rules on safeguards will have to take account of that linkage in order to be effective.

The chapter begins with an analysis of the relationship between safeguards and the process of structural adjustment. The focus of the balance of the chapter is on examining patterns in the current use of safeguards that may influence the development of new multilateral rules. The diverse forms of safeguard protection, i.e., the range of trade policy instruments employed, are discussed in terms of their economic effects and the benefits derived from them by

domestic and foreign interest groups. The frequency of use, duration and other aspects of the incidence of each type of safeguard measure are then examined. Chapter 4 will review past negotiations aimed at creating new safeguards rules.

Safeguard Protection and Structural Adjustment

Structural adjustment is the process by which economic resources are transferred between productive activities in response to changes in the pattern of rewards available from those activities. It is a normal, pervasive, and on-going process in all economies. The direct evidence of adjustment is provided by changes in the structure of production and trade as among industries within a given country, and between countries engaged in international trade. Table 3.1 shows that adjustment can be clearly observed over time even at a very broad levels of aggregation across industries. Table 3.2 illustrates the shifts in trade patterns between broad groups of countries.

Although the GATT does not explicitly recognize any connection between safeguard actions and adjustment, the concept of serious injury to domestic producers as a result of import competition - on which rests the rationale for Article XIX - is closely related to the process of structural adjustment. At the most general level of definition, serious injury is a deterioration in the economic health

TABLE 3.1

AVERAGE SHARES OF SIX CATEGORIES OF MANUFACTURES IN TOTAL VALUE OF
EXPORTS AND PRODUCTION FOR 14 OECD COUNTRIES

	<u>Exports</u>			<u>Production</u>		
	1970- 1971	1977- 1978	1984- 1985	1970- 1971	1977- 1978	1984- 1985
Resource-intensive industries	15.3	14.4	13.5	27.5	28.5	27.5
Labour-intensive industries	12.8	12.3	9.8	15.6	13.6	12.4
Production-intensive industries	58.7	62.4	61.1	46.8	49.7	49.2
Science-based industries	13.1	11.0	15.5	10.1	8.8	10.9

Notes:

1) Countries included are Australia, Belgium/Luxembourg, Canada, Finland, Germany, Italy, Japan, the Netherlands, Norway, Sweden, the United Kingdom, and the United States.

2) Industry groupings are based on the International Standard Industrial Classification (ISIC) and defined according to the major factor affecting competitiveness. See OECD, 1987, p. 283, Annex A.

Source: Organization for Economic Cooperation and Development, Structural Adjustment and Economic Performance (Paris: CECD, 1987), Table 7.2, p. 273.

TABLE 3.2

SHARES OF PARTNER COUNTRIES IN TOTAL MANUFACTURING EXPORTS
OF DECLARING COUNTRIES

<u>Declaring Countries</u>	<u>Partner Countries</u>					
	1962			1985		
	OECD	NICs	DEVC	OECD	NICs	DEVC
United States	58.8	3.8	35.7	62.6	9.1	26.9
Japan	46.6	13.4	35.3	58.2	13.0	26.4
EEC (10)	72.5	2.2	19.9	78.8	2.0	15.7
OECD	69.1	3.2	22.8	73.3	4.9	18.7

Notes:

1) NICs: Brazil, Singapore, South Korea, Taiwan, Hong Kong.

DEVC: Developing countries (excluding NICs).

Source: OECD, 1987, p. 289, Table 7A.1.

or well-being of an industry (i.e., a group of firms producing like or directly competitive products.) Although difficult to define in more specific terms, a determination of serious injury is usually based on declines in domestic output, selling prices, market shares, profits, employment, capacity utilization or other basic indicators of industry performance. The existence of serious injury, as evidenced by such declines over a period of time, corresponds to a situation where the structure of economic activity among industries within an economy is under pressure to change - that is, where structural adjustment is occurring or about to occur.

Such adjustment pressures may stem from a wide variety of factors, such as technological innovation, changes in consumers tastes, changes in the availability of resources (e.g. energy), the emergence of new suppliers and competitors in foreign countries, the globalization of production and investment by multinational firms and through joint ventures, and changes in government policy. In a relatively open global economy, the effect of these factors on domestic industries may be manifested through international trade. Table 3.1 shows that fluctuations in industry export shares have been at least as great as those in production shares.

As adjustment begins to take place, affected industries in an importing country may find themselves in a situation where a claim of serious injury due to increased imports can be made. The injury may seem to be directly related to trade developments, in the sense that

imports have increased coincident with the decline in the industry's health, despite the fact that it actually reflects more fundamental changes. To be sure, injury could occur in cases where there is no real, long-term pressure for structural adjustment. A surge in imports could occur as a result of a temporary alteration in trading patterns, for example due to gaps between the opening of new plants within a domestic industry and the closure of old ones, the influence of fluctuating weather conditions on agricultural production, or policy initiatives that are not sustained over the long term. However, while it may be obvious in some cases that the causes of injury are indeed short-term in nature, it is generally difficult if not impossible to determine with any certainty whether any particular instance of injury is not in fact part of a process of on-going structural adjustment.

Moreover, producers in the affected industry may view it as being in their interest to maintain that their difficulties are only temporary, as opposed to part of a long-term pattern of decline. The most common justification offered by proponents of short-term protection is that the industry experiencing injury can benefit permanently from a "breathing space" in which it is sheltered from international competition. In principle, this argument has some merit. The economic rents made available to the protected industry by the various instruments of safeguard protection (described below) may make possible productive investments and rationalization of product lines, allowing the industry to emerge newly competitive.

The breathing space argument may also have merit on equity grounds, to the extent that it alleviates adjustment costs, allowing less competitive firms and less skilled or older workers to exit an industry and make room for new entrants.

However, the use of safeguard protection to provide such temporary breathing space is subject to several drawbacks.^[1] First, if there are productive investment opportunities available to the industry seeking protection, policymakers must ask themselves why they are not presently being exploited through the entry of new resources into the industry. While there may be a legitimate reason, for example defects in the private capital market, it is unlikely that temporary protection is the best remedy for the problem. Second, temporary protection, by reducing uncertainty, may encourage increased labour-saving investment. The result may be a skewing of the structure of production within the industry such that the benefits of the breathing space accrue largely to capital to the detriment of labour.

Third, and most important, is the effect of safeguard protection on the inflow and outflow of resources in the protected industry. Whatever the cause of the injury, and regardless of whether that cause is temporary in nature or the result of structural adjustment pressures, the initial effect of safeguard protection granted to remedy the injury is to slow the process of adjustment. Domestic producers currently facing injury from imports are provided with

additional power to set their prices higher than import prices for any given level of production, which, ceteris paribus inevitably increases the attractiveness of entering into or remaining in the protected industry beyond what it would otherwise be. There is therefore an immediate incentive to maintain or augment the levels of economic resources in the industry, over and above the presumably declining levels that would otherwise prevail.

This is not to suggest that adjustment cannot take place following the imposition of safeguards; Hufbauer and Rosen (1986) document a great deal of adjustment in U.S. industries benefiting from "special protection", presumably due in part to industries taking advantage of the breathing space it affords. Nevertheless, the authors criticize the use of such measures "for providing rather little assistance to workers and firms that are forced to depart the troubled industry...[and] for not promoting a smooth transition to the realities of international competition."^[2] On balance, it is difficult to envisage circumstances in which safeguard protection will in practice have a positive effect on the adjustment process in overall terms. As Pearson and Salembier argue,

Unless the government can correctly identify which industries will ultimately become competitive and which will not, trade protection gives confusing signals More specifically, temporary protection designed to slow the decline of an industry and moderate labour adjustment costs may be excessive and impede the outflow of resources. Import legislation generally fails to differentiate between protective measures that encourage industry adjustment, either through inducing enhancements in competitiveness or prompting resource outflows, and those that inhibit adjustment.^[3]

Whether or not the incentive to bring additional economic resources into the industry is a lasting one depends in part on the perceived and actual duration of the safeguard protection. A safeguard measure whose duration is announced at the outset to be several years clearly has the potential to produce a fairly lasting incentive. New workers and firms may be prompted to move into the protected industry to take advantage of the above normal returns available during the period the safeguard measure is to be in force. Existing resources in the industry may similarly tend to delay any decisions they might otherwise take to move out of the industry at least until the safeguard protection is scheduled to expire.

Even for relatively short duration measures, however, the continuation of activity in the protected industry by domestic producers can result in the maintenance of the conditions that led to the imposition of safeguards in the first place. This reinforces the political pressure on the importing country's government to repeat its temporary protection, creating a cycle of repeated situations of imminent injury remedied by the use of "temporary" safeguards. Empirical evidence presented later in this chapter shows that safeguard actions in fact tend to be applied repeatedly in the same or related sectors. The GATT Secretariat has described succinctly the phenomenon whereby ostensibly temporary measures can become more or less permanent features of the international trade system:

...industries may become vulnerable to injury caused by the importation of competing products precisely because they have failed to adjust in time to changing market conditions. The effect of a safeguard measure is to relieve the pressure for such adjustment. There is thus an implicit contradiction between the stated objective and the immediate effect of the measure taken, which may explain why many safeguard measures, both legal and illegal, have proved extremely difficult, if not impossible, to eliminate.^[4]

Richardson, (1988) identifies this as a variant of the technical problem known as time inconsistency that can afflict all temporary policies.^[5]

The relationship between safeguards and structural adjustment poses particularly difficult challenges for the maintenance of the liberal international order to which the world's major trading nations have committed themselves, most recently in the Punta del Este declaration launching the Uruguay Round of multilateral trade negotiations. Even if countries were able to agree that, in some instances, the rationale for safeguard actions is to facilitate adjustment in the short term, the actions themselves hold the potential to frustrate the adjustment process.

As a result of the connection to adjustment, comprehensive and effective disciplines on safeguards will require at least a minimal degree of surveillance of the adjustment process over time in countries using safeguards. It is not feasible or even possible in most safeguard cases to establish, before any trade restrictions are put in place, what their effects will be on the adjustment process.

Adjustment is a continuous, on-going process that is influenced by a wide variety of factors, any of which may change over time. Only by monitoring the movement of resources and/or the progressive restoration of competitiveness in a protected industry is it possible to determine whether adjustment is in fact taking place. Any multilateral agreement that did not provide for some such monitoring could at best exercise only indirect discipline on the use of safeguards. Removed from the political-economic processes at work to perpetuate the safeguard measure, multilateral rules would be effective only secondarily - and at least as easily circumvented as is Article XIX at present.

The Instruments of Safeguard Protection

Regardless of their adverse effects on adjustment, safeguards will continue to be a feature of the international trade system for the foreseeable future. Safeguards are too attractive in pragmatic terms to governments facing political pressure and to industries facing increased import competition. That attraction depends in large part on the pattern of benefits obtained - and costs incurred - for governments and industries as a result of safeguard measures. This section examines the benefits and costs of each of the major types of safeguard measures, as well as their potential effects on the adjustment process in the importing country.

As defined in Chapter 1, safeguard measures are contingent protection measures used by Governments to provide additional protection to domestic industries, over and above standing levels of protection, in instances where imports are "fairly traded" i.e., not dumped or subsidized. Safeguard protection may be viewed, from an economic perspective, as the use of trade policy instruments to provide a domestic industry with a degree of market power relative to its foreign competitors, i.e., control over the price at which it can sell relative to that at which imports can be sold, in the domestic market. From a political-economic perspective, safeguard protection may be viewed as a transfer of value by government in response to a mixture of domestic interest group pressures, possible trade relations consequences, and other considerations. Both perspectives offer insight into how safeguard measures interact with the process of structural adjustment - and into the problem of negotiating new multilateral rules governing safeguards.

One of the most important considerations from the point of view of multilateral rules on safeguards is that a wide variety of different instruments are used to provide safeguard protection. This contrasts with the situation in the areas of dumping and subsidy/countervail, the other main forms of contingent protection that are subject to multilateral rules, where protection is provided in the main through additional countervailing or anti-dumping duties. Safeguard measures, by comparison, take forms ranging from simple tariff increases or surcharges to complex import licensing schemes

and quantitative restrictions on exports negotiated with foreign suppliers.

The instruments used to provide safeguard protection are of six major types:

- 1) tariff-based measures, including simple tariff increases, special surcharges, and changes in tariff headings or structures;
- 2) customs procedures such as arbitrary import valuation rules and import license requirements;
- 3) global import quotas;
- 4) tariff rate quotas (TRQs);
- 5) voluntary export restraints (VERs) and other selective quantitative restrictions (QRs) on exports by foreign suppliers, which are taken outside of the Article XIX rules; and
- 6) other measures of unspecified form.

The diversity of instruments employed is of interest for two reasons. First, the diversity of types of measures influences the nature of workable multilateral disciplines on safeguards. The

technical feasibility of more rigid rules on the use of safeguards is inherently reduced where a variety of instruments are in use and where new instruments are frequently introduced. Procedures-oriented disciplines, on the other hand, take on increased importance, as the need for information on the nature and effects of the complete range of safeguard measures is greater. The generation of such information through notification, consultation, surveillance and dispute settlement is therefore a prerequisite for effective multilateral disciplines. Without it, rules proscribing or requiring adherence to specific practices are liable to lose some of their practical effectiveness.

Second, the variation in the economic and political-economic effects of different safeguard measures may complicate the task of negotiating a multilateral agreement. Different measures will create different benefits and costs for domestic and foreign producers, and hence provide incentives to them to respond to the measures - resisting, acquiescing in or facilitating adjustment - in different ways. The overall cost or benefit to the invoking country and to exporting countries may vary. The pressures on the invoking country's government from domestic interests and from foreign governments to maintain, modify or terminate the measure may differ as a consequence. These factors will influence the prospects for the duration of the each type of measure, and for its spread to other industries and other countries. As a result of the wide range of instruments in play and the correspondingly wide range of potential

economic and political-economic effects, the negotiating interests of participants in any multilateral negotiation will be difficult to determine, both for the participants themselves and for their negotiating partners. The effort and time required to conclude an agreement on effective disciplines is increased and the probability of success in any given negotiation is correspondingly reduced.

Table 3.3 shows the frequency of each of the major types of measures over time.^[6] This table and those that follow are based on a database of Article XIX actions and grey area measures constructed from GATT and OECD documents. While it is impossible to ensure that these sources cover 100% of the possible universe of safeguard actions, it is worth noting that their coverage is not restricted to actions officially acknowledged by governments. Moreover, as noted in Appendix A, the coverage of the database has been verified against several other sources. As such, the database can be considered reasonably comprehensive.

Perhaps the most noteworthy feature of this table is the relative rarity of safeguard actions. Over the period 1950-87, a total of 272 actions were taken, for an average of only 7.4 actions per year. However, as reported in Chapter 1, the trade coverage of safeguard restrictions has been estimated to be in the range of 13-15% for major developed countries. Many of the actions affect very large amounts of trade; for example, Hufbauer and Rosen (1986) report U.S. actions affecting imports of \$29.3 billion in automobiles and

TABLE 3.3

FREQUENCY OF USE OF SAFEGUARD MEASURES BY CATEGORY OVER TIME

	Tariff-Based Measures	TRQs	Customs Procedures	Global Quotas	VERs, etc.	Other	Total
1950-54	3	1	0	0	0	0	4
1955-59	11	0	3	1	0	0	15
1960-64	11	0	5	1	0	1	18
1965-69	4	1	4	8	1	0	18
1970-74	7	0	2	3	3	0	15
1975-79	7	4	7	17	36	1	72
1980-84	13	1	7	5	36	3	65
1985-87	6	0	1	3	55	0	65
Total actions, 1950-87	62	7	29	38	131	5	272
%	22.8%	2.6%	10.7%	14.0%	49.6%	1.8%	100%
Total actions, 1975-87	26	5	15	25	127	4	202
%	12.9%	2.5%	7.4%	12.4%	62.9%	2.0%	100%

Source: see Appendix A

\$10.6 billion in steel out of total U.S. imports of \$328.7 billion in 1984. Clearly, the infrequency of safeguard actions clearly cannot be taken as an indication that the overall scope of the problem is insignificant. Moreover, the table shows that, in the most recent period for which comparable data are available, almost two-thirds of all safeguard actions take the form of VERs or similar measures, which, as we shall see below, have especially pernicious effects.

Table 3.4 shows the usage of each type of measure by invoking countries. The most predominant pattern that emerges from the table is the concentration of safeguard usage among a small group of fairly large economic actors. About 70% of all actions are accounted for by four parties: the EEC, the U.S., Australia and Canada. At least 21 generally smaller countries make up the remaining 30%. The importance of economic size in the pattern of safeguard usage is evident from the fact that the two largest users, the EEC and U.S., account for half of all actions. [7]

Relative economic size also appears to play a role in terms of the type of actions used. The ability to ignore GATT rules and negotiate bilateral agreements to deal with pressures for safeguard action would appear to be greater for the U.S. and EEC, both of which exhibit a strong tendency toward non-Article XIX actions such as VERs. Canada and Australia, the two smaller countries among the major users, tend to rely much more on Article XIX (at least

TABLE 3.4

NUMBER OF SAFEGUARD ACTIONS BY COUNTRY AND TYPE OF MEASURE
(1975-87)

Tariff-Based Measures	TRQs	Customs Procedures	Global Quotas	VERs, Other etc.	%XIX	Total		
Australia	2	5	4	9	1	0	95.2	21
Austria	0	0	0	1	1	0	50.0	2
Benelux	0	0	0	0	2	0	0.0	2
Canada	2	0	1	8	8	0	57.8	19
Chile	3	0	0	0	0	0	100.0	3
EEC	3	0	7	4	45	1	21.6	60
Finland	2	0	0	0	0	0	100.0	2
France	0	0	0	0	1	1	0.0	2
Germany	0	0	0	0	2	0	0.0	2
Iceland	0	0	1	0	0	0	100.0	1
Italy	0	0	0	0	1	1	0.0	2
Japan	0	0	1	0	4	0	0.0	5
New Zealand	0	0	1	0	0	0	100.0	1
Norway	0	0	0	2	7	0	11.1	9
Portugal	0	0	0	0	1	0	0.0	1
S. Africa	3	0	0	0	0	0	100.0	3
Spain	0	0	0	0	2	1	33.3	3
Sweden	0	0	0	0	2	0	0.0	2
Switz.	3	0	0	0	0	0	33.3	3
U.K.	0	0	0	0	1	0	0.0	1
U.S.	7	0	0	1	32	0	25.0	40
N/a	1	0	0	0	17	0	0.0	18
% XIX Actions	88.4	100.	0	73.3	96.0	2.3	50.0	33.6
TOTAL	26	5	15	25	127	4		202

Note: The column "%XIX" refers to the percentage of all actions notified to GATT. Non-notified actions may include not only VERs but also tariff-based measures (e.g. two non-notified tariff-based measures in the case of Switzerland) or other types of measures. In addition, three VERs (two by the U.S., one by the EEC) are classified as XIX actions on the database since they were either subsequent to or ancillary to non-discriminatory measures notified under Article XIX.

Source: See Appendix A.

ostensibly on a non-discriminatory basis). Australia has invoked Article XIX for all but one of its safeguard actions. While this may be due to the "luxury" of its relatively high level of standing protection, with tariffs on finished manufactures about 2.5 times as high as those of other industrial countries, it is noteworthy that Australia is also the smallest of the major users.^[8] Moreover, the list of countries whose safeguard actions have always been taken under Article XIX (Chile, Finland, Iceland, New Zealand and South Africa) contains proportionately more small countries than the list of those whose safeguard actions have all been taken outside GATT rules (Benelux, France, Germany, Italy, Japan, Portugal, Sweden and the U.K.).

Each of the various instruments of safeguard protection appears to be used across a fairly wide range of different industries. Table 3.5 shows that while VERs dominate the picture in almost all industries, the incidence of each of the various types of measures such as global quotas, tariff-based measures and even TRQs spreads across a number of industries. For example, global quotas and VERs are both used in basic industries such as food and textiles as well as in more "high-tech" activities such as transport equipment; both measures appear in relatively homogeneous activities such as primary and fabricated metals as well as in those with greater product differentiation such as textiles, clothing and leather. There is no clearly apparent pattern in terms of the characteristics of various industries in which each type of measure is used.

TABLE 3.5

NUMBER OF SAFEGUARD ACTIONS BY INDUSTRY AND TYPE OF MEASURE
(1975-87)

	Tariff-Based TRQs		Customs	Global	VERs, Other XIX		Non	Total	
	Measures		Proc.	Quotas	etc.		XIX		
Agriculture	6	0	1	0	6	0	5	8	13
Fish./Log./									
Mining	0	0	0	0	1	0	0	1	1
Food	6	1	6	3	17	1	14	20	34
Leather and									
Rubber	1	0	1	4	12	2	7	13	20
Textiles	1	1	2	4	23	1	7	25	32
Clothing	1	2	0	2	11	0	5	11	16
Wood/Furn./									
Paper	1	0	1	1	1	0	3	1	4
Primary and									
Fab. Metal	4	1	0	6	19	0	12	18	30
Machinery									
and Equip.	0	0	1	0	6	0	1	6	7
Transport									
Equip.	1	0	0	2	13	0	3	13	16
Electrical/									
Electronic	3	0	3	0	14	0	6	14	20
Non-metal									
Min. Prod.	0	0	0	1	2	0	1	2	3
Chemical and									
Chem. Prod.	2	0	0	0	0	0	2	0	2
Scientific/									
Prof. Equip.	0	0	0	2	0	0	2	0	2
Other Mfg.	0	0	0	0	2	0	0	2	2
TOTAL	26	5	15	25	127	4	68	134	202

Note: The column "Non-XIX" refers to the number of actions not notified to GATT. Non-notified actions may include not only VERs but also tariff-based measures (e.g. two non-notified tariff-based measures in agriculture) or other types of measures. In addition, three VERs (in the leather, primary metal, and electrical products industries) are classified as XIX actions as they were either subsequent to or ancillary to non-discriminatory measures notified under Article XIX.

Source: See Appendix A.

In terms of the overall incidence of safeguard measures, the group of industries that receives relatively little safeguard protection of any kind (including fishing/logging/mining and scientific and professional equipment) varies just as widely as the group of industries that is frequently subjected to safeguard actions (food, electrical and electronic equipment). Safeguards are used to protect oligopolized industries (automobiles in the U.S.) and atomistically competitive ones (footwear in Canada); producer goods (steel) and consumer products (televisions); and perishables (yellow onions) as well as durables (automobiles) or semi-durables (clothing). It would seem that the pressures that give rise to safeguard actions are not peculiar to the industries affected.

While it is not the purpose of this paper to compare the various domestic policymaking processes, it is worth noting that the data do not appear to support a broad relationship between the nature of domestic legislative instruments and the pattern of safeguard usage. Canada and Australia, whose systems are similar to that of the U.S. in that they provide for public hearings and decisions by independent tribunals, rely much more on Article XIX measures such as global quotas than does the U.S. The U.S. and the EEC, on the other hand, both rely on VERs for about 75% of their safeguard actions despite the fact that EEC decisions on safeguards are typically made through a non-transparent, internal bureaucratic process generally regarded as the polar opposite of the U.S. system.^[9]

The following section describes the costs and benefits that each type of measure creates for domestic and foreign producers, with a view to illustrating their diversity and their effects on adjustment. The effects on consumers are also examined, since any measure that influences the benefits obtained by purchasers of a product may interfere with market signals and have a consequential impact on the adjustment process. Where pertinent, the effects on the revenues and administrative responsibilities of the governments invoking them and on exporting countries are also set out.^[10] While there are important variations within each of these categories, particularly as regards their complexity and administrative burdens imposed on importers and exporters, the economic and political-economic effects of the various forms of safeguard protection can be illustrated by examining these broad categories.

Tariff-Based Measures

A tariff is essentially a tax imposed on sales of imported goods but not on sales of domestic goods. Unlike most other taxes, the primary purpose for which tariffs have been used in recent years, at least in industrial countries, has been not to raise revenues but to shift demand in favour of domestic products. Most countries levy tariffs according to schedules setting out rates applicable to specific products, generally on an ad valorem basis. Safeguard actions may increase those rates, change the classification so as to shift certain products to headings that are subject to higher rates,

or require the payment of additional surcharges or surtaxes over and above the normal rates. Some such surcharges are explicitly intended to act as substitutes for anti-dumping or countervailing duties. Both surcharges and tariff increases may be applied differentially to imports at certain price levels, but are generally applied on an MFN basis.

Whatever form is used, imposition of a tariff generally causes a rise in the prices of imported goods offered for sale in the domestic market (although, as discussed below, the rise may be attenuated if the importing country represents a significant proportion of the total world market i.e., if it holds a degree of monopsony power.) This in turn makes it possible for domestic producers to raise their prices, as consumers discouraged by higher import prices increase their demand for domestic goods.

In a competitive market, where domestic and imported goods are similar, domestic producers respond to the price increase by expanding output, while imports fall off. While overall consumption is reduced as a result of the general price rise, domestic goods take a larger share of the now smaller market. Where markets are less than perfectly competitive, for example due to monopoly power or product differentiation, domestic producers benefit by being able to charge higher prices without having to lower output, as they would otherwise have to do. Tariffs that discriminate among imports on the basis of price may reinforce domestic producers' market power vis-à-

vis imports, particularly in specific market niches, and accentuate these effects.

The net result of these price effects is to increase the attractiveness of entering or remaining in the protected industry. Resources currently employed in the industry that might otherwise have been allocated by their owners to new, more profitable activities are more likely to remain. New workers and firms may also be tempted to enter the industry, as the rise in product prices makes possible increased returns to factors of production. Where market signals that would prevail in the absence of the tariff - the same factors that would give an industry a good case for injury - might have drawn resources out of the industry and led to a decline in its absolute size, the tariff serves to distort market signals in such a way as to slow or even reverse the adjustment process.

In addition to their effects on the protected industry, tariffs result in a redistribution of economic welfare within the importing country. Consumers in the importing country unambiguously lose as a result of the tariff increase, as they pay higher prices for both imported and domestic goods, in effect suffering a loss in real income. Where the protected industry produces intermediate inputs for downstream industries, the latter may have to either increase prices to its final customers or face declines in profits. The customs duties collected on imports entering the country may produce revenues for the government of the importing country, provided that

the drop in imports is not so large as to offset the increase in the tariff. The redistributive effect of a tariff within the importing country is therefore to transfer welfare from consumers, including any downstream industries, to domestic producers in the protected industry and to the Government.

The effect of a tariff on the aggregate economic welfare of the importing country is also generally negative. Losses accrue to the importing country both as a result of consumers being forced to purchase from higher cost domestic producers, and as a result of the misallocation of resources toward the protected industry and away from otherwise more productive activities. The most important exception is where the importing country exercises a degree of monopsony power in world markets. In this case, exporters faced with a tariff are willing to absorb some of the cost by way of reduced prices in order to maintain output levels, while the importing country gains from this terms of trade effect as well as from the increased government revenues. However, it is important to note that global economic welfare is reduced even by such "nationally optimal" tariffs.

One of the key concepts on which the GATT is founded is that restrictions on trade should be limited to the imposition of customs duties.^[11] Despite the negative effects enumerated above, tariffs are highly visible barriers, and lend themselves to negotiated reductions. Moreover, as we shall see below, their economic effects

are generally less distortive of trade and have less serious effects on adjustment than other barriers such as global quotas or selective quantitative restrictions.

However, the intention of the original framers of the General Agreement is clearly being frustrated by the use of safeguard measures. While ninety percent of tariff-based safeguard measures are notified to GATT under Article XIX (see Table 3.3), tariff-based measures account for only about 13% of all safeguard actions over the period 1975-87. Even for those safeguard actions notified under Article XIX, and therefore presumably GATT-consistent, (shown below in Table 3.6) tariff-based measures account for barely one-third of all actions over the period 1975-87. When tariff-based measures are employed, the average duration of safeguard protection is just over 2 years, a significantly shorter period than is the case for other types of measures. This is quite positive in terms of the effect of tariff-based measures on the adjustment process, in that the market signals that attract resources into the protected industry are relatively weak for measures of such short duration. However, it also means that of the total number of years of safeguard protection provided, tariffs account for a very small proportion indeed (just 8%) relative to non-tariff measures. In the absence of effective disciplines on safeguard measures other than tariffs, the discipline represented by the short duration of tariff-based measures is much attenuated in terms of the overall impact on the trade system.

TABLE 3.6

FREQUENCY OF USE OF GATT ARTICLE XIX ACTIONS BY CATEGORY OVER TIME

	Tariff-Based Measures	TRQs	Customs Procedures	Global Quotas	VERs, etc.	Other	Total
1950-54	3	1	0	0	0	0	4
1955-59	11	0	3	1	0	0	15
1960-64	11	0	5	1	0	1	18
1965-69	4	1	4	8	0	0	17
1970-74	7	0	2	3	0	0	12
1975-79	5	4	7	16	3	0	35
1980-84	12	1	3	5	0	2	23
1985-87	6	0	1	3	0	0	10
Total 1950-87	59	7	25	37	3	3	134
%	44.0%	5.2%	18.7%	27.6%	2.2%	2.2%	100%
Total 1975-87	23	5	11	24	3	2	68
%	33.8%	7.4%	16.2%	35.3%	4.4%	2.9%	100%

Note: The 3 VERs classified here as Article XIX actions were either subsequent to or ancillary to non-discriminatory measures notified to GATT under Article XIX.

Source: See Appendix A.

Customs Procedures

Administrative requirements for entry of imported goods at the border of the importing country effectively impose burdens on imports but not on domestic goods. Arbitrary import valuation rules, for example, can be used to increase the amount of customs duty payable at any given tariff rate. Import license requirements can result in increased administrative costs for imports relative to domestic goods, even if licenses are granted freely. Import deposit schemes can also impose additional financing costs on import transactions. As with tariff increases, customs procedures may be applied differentially to imports at certain price levels. Some idea of the potential impact of the use of customs procedures to provide safeguard protection can be gained from studies of the normal administrative procedures for international transactions, which have estimated the cost of documentation, for example, from over one percent to almost 6 percent of the value of import shipments.^[12]

The use of customs procedures to provide safeguard protection is analogous to that of a tariff increase in terms of the impact on prices and the consequent effects on adjustment, as well as the redistributive and aggregate effects. Imported goods face requirements not imposed on domestic goods which has the effect of raising the relative price of imports. However, the administrative nature of this type of measure creates a degree of uncertainty as to how restrictive the safeguard action will actually be. For example,

the financing costs associated with import deposit schemes - and hence their protective effect - depend in part on prevailing market rates of interests for the funds that are held by the importing country government. Customs procedures may therefore add significantly to the cost of importing without corresponding benefits for domestic producers, who face the same uncertainty as to the degree of protection provided.

Most customs procedures produce relatively little in the way of government revenues; many, for example import licensing requirements, produce no revenues at all. The interests of consumers in the importing country suffer both from the redistributive effects of effective tariff increases as well as from the costs of increased uncertainty. The aggregate effects of this type of safeguard action at the national and global levels are likely to be at least as negative as those of tariff increases.

The frequency of use of customs procedures to provide safeguard protection is relatively low, accounting for only 15 of the 202 actions identified in the 1975-87 period. However, their importance may be understated by this percentage, since their impact is for the most part cumulative with that of other trade barriers (whereas the effects of other types of barriers, for example tariffs and quotas, are not always additive).

Global Quotas

Global quotas are quantitative limits on the amount of imports allowed into a country without regard to origin (i.e., on a non-discriminatory basis). The quotas on imports of clothing products imposed by Canada in 1976 are an example of such a measure. The government of the importing country gives out a limited number of licenses to import and prohibits imports without a license. As long as the number of licenses available is smaller than the amount of imports demanded by consumers, the short term effects of global quotas in a competitive market are similar to those of tariff: the prices of both domestic goods and imports rise, and the quantity of imports falls while domestic production increases.

However, the adjustment, redistributive and aggregate welfare effects of a quota can be quite different than those of a tariff in certain circumstances. For example, where the domestic market for the protected good is growing, the use of a tariff allows the increased demand to be met by both duty-paid imports and by domestic production. With a quota, on the other hand, the entire increase in demand spills over into the domestic market, resulting in further price rises and higher costs to consumers and to the aggregate welfare of the importing country than would be the case with a tariff. The effect of the quota on prices is greater where the rate of growth in demand is higher. Similarly, changes in foreign supply conditions, such as technological advancements abroad, have less

impact on the quantities offered for sale in the domestic market under a quota than under a tariff. Domestic producers are subject to greater uncertainty as to the effect of a quota on prices but benefit from its predictable effect on the quantity of imports supplied.

Where there is only one or a few domestic producers, a quota can reinforce existing market power or create it where none existed before, by allowing them to restrict output and command higher prices without the danger of customers switching to imports. As with a tariff, these effects can be accentuated if the quota discriminates between imports on the basis of price. A tariff, however, does not shut off import competition completely, since imports are still allowed at the duty-paid price, and so contributes less decisively to monopoly or oligopoly in the domestic market (assuming that the tariff is not so high as to effectively exclude all imports). In short, a quota benefits domestic producers at least as much as a tariff, and quite possibly more under certain market structures. Domestic producers are more certain of their share of the domestic market, and more effectively insulated from foreign suppliers. In addition, since the effect of a quota on prices paid by consumers is less transparent than that of a tariff, the political "clout" of producers is less likely to be offset by that of consumers.^[1] The potential impact of a quota on the adjustment process is correspondingly greater, and costs to consumers and to the aggregate welfare of the importing country higher, than is the case with a tariff.

Quotas may, however, have effects that are quite perverse from the point of view of producers in the protected industry, as well as from the perspective of the degree and direction of their effects on adjustment. Since quotas are almost exclusively set in terms of the volume rather than the value of imports, there exists an incentive for exporters to maximize their profits by switching their exports to higher-quality, higher-priced units on which higher profit margins may be earned. Those domestic producers whose product lines are concentrated in these same high-end market niches may be forced to shift into less profitable production of lower-end product lines. At the same time as resources are being attracted into the industry by returns higher than those available without quota protection, existing producers may be faced with such strong competition in their current lines that they too must adjust. In this way, quotas may give rise to intra-industry adjustment in addition to the inter-industry shifts such as are prompted by tariff protection.

The system by which the government of the importing country allocates import licenses determines the distribution of the benefits of a quota among producers and other domestic interests, as well as the impact of the quota on government revenues. The main ways of allocating licenses are i) by competitive auctions; ii) by resource-using application systems; and iii) by assignment of fixed shares. [14]

Under competitive auction, the right to import the protected goods is sold by the government to interested individuals. The revenues from the auction could be expected to be roughly equivalent in magnitude to the revenues from a tariff that provides the same degree of protection.^[15] Of the three main allocation systems, the competitive auction system involves the least cost to the aggregate welfare of the importing country, and creates the least amount of benefit for domestic producers or other holders of quotas licenses. It is also the only allocation system that brings in government revenues. Unfortunately, however, competitive auction systems are little used in practice, perhaps because they offer comparatively little to domestic producers, the intended beneficiaries of safeguard action, in relation to other systems of allocation.

The distribution of import licenses through application procedures that require potential importers to devote resources to securing a license amounts to competition on non-price grounds (instead of purely price grounds, as under auctioning). Examples include first-come, first-served systems, which reward individuals who take the time to queue up for licenses every month or quarter, and systems requiring individuals to demonstrate their need for import licenses according to some specified criteria, which reward those with particular skill in lobbying government officials. Such resource-using application procedures tend to dissipate part or all of the potential gains to quota holders by tying up resources in bureaucratic red tape. Allocation of import licenses in this fashion

tends to be the most costly in aggregate terms, of comparatively little benefit to domestic interests, and results in costs rather than revenues for the government.

Probably the most common import license allocation system for global quotas is by assignment of fixed shares of the overall quota to firms according to the proportions of imports (or other fixed proportions) they accounted for in some representative period before the safeguard action was taken. Such systems enrich holders of quota licenses by the amount of the difference between the foreign price of imports and the price at which they can be sold domestically, times the number of units of quota held. Quota holders may be domestic producers (who benefit doubly), importer/wholesalers, and retailers. Each of these groups may be able to exercise increased market power as a result of the quota. The benefits they derive from the quota come at the expense of consumers and of the aggregate welfare of the importing country, with no offsetting benefits in the form of government revenues. (Indeed, the bureaucratic costs of fixed shares systems may approach those of resource-using application systems. It is also worth noting that any market power that accrues to retailers as a result of the quota may actually harm domestic producers.)

Most importantly, fixed shares allocation systems create readily identifiable vested interests on the part of quota holders in the maintenance of the quota, in addition to those created by virtue of the overall benefits of protection for the industry. The effect on

adjustment is exaggerated by the fact that a valuable, non-appropriable asset is bestowed upon quota holders. Whereas with a tariff or with an auction quota the benefits of protection for particular producers can be bid away by other producers, either in the marketplace for the domestic goods or in the auction, an individual quota holder has a proprietary interest in protection under a fixed shares allocation system. There is therefore a very specific impact on adjustment at the level of the individual quota holders, as opposed to the more generalized impact of other forms of protection. Domestic producers who hold quota will have a much more powerful incentive to maintain patterns of production that allow them to take maximum advantage of their rights to import part of their product line.

Global quotas have been used relatively infrequently to provide safeguard protection. Only 25 of the 202 safeguard actions from 1975-87 have taken the form of global quotas. It is interesting to note, however, that global quotas are relatively more common in cases where countries take safeguard action consistent with GATT disciplines, accounting for over one-third of all Article XIX actions. Virtually all global quotas are notified to GATT under Article XIX; the sole exception observed was a measure that was notified only after it had been in force for a year. The average duration of safeguard protection delivered in the form of global quotas is 2.7 years, slightly greater than that of tariff-based measures, but significantly shorter than that of other types of

measures, particularly VERs. However, as is true of tariffs, the significance of such shorter duration in terms of the overall discipline in the trade system is much reduced in view of the lack of discipline on other measures. Global quotas have provided just 9% of the total number of years of safeguard protection.

Tariff Rate Quotas

Tariff rate quotas, or TRQs, combine features of global quotas with tariffs. Australia has used TRQs in a number of instances, including brandy, textiles and clothing products. Additional tariffs are imposed on imports over a certain quantity, while imports up that quantity are allowed to enter at the lower tariff rate (i.e., the standing level of tariff protection). The government either issues two different types of import permits, entitling importers to tariff treatment at the lower and higher rates, or simply issues a single type of license for the purpose of counting imports, and begins charging a higher tariff on all imports once the quantitative limit has been exceeded.

As might be expected, the effects of TRQs are intermediate between those of global quotas and tariffs.^[16] As with a global quota, the degree to which domestic producers are able to charge higher prices is increased over and above the margin provided by the standing tariff protection at the point where the quantitative limit on imports is reached. Unlike a quota, however, the additional

protection afforded by a TRQ is limited to the margin provided by the higher tariff rate. Whereas the price margins provided to domestic producers under a quota can increase if the market is growing, TRQs permit some of the increase in demand to be met by imports. In terms of their attractiveness to domestic producers, TRQs resemble tariffs fairly closely, in that the benefits are derived mainly through a relatively constant wedge between the prices of imports and domestic goods. TRQs do not provide certainty as to domestic market share nor insulation from changes in foreign supply conditions.

The government imposing the TRQ may allocate rights to import at the lower tariff rate among importers, including domestic producers, in the same fashion as allocations of global quotas are made. These rights have scarcity value, though not so great a value as the equivalent quota rights due to the possibility of importing at the higher tariff rate, and hence can create vested interests on the part of their holders (depending on the allocation system, as described for quotas above).

It is also possible for TRQs to be used in a fashion analogous to voluntary export restraints (VERs), which are discussed in the following section. Briefly, the quantitative limit, and perhaps the higher tariff rate as well, could be negotiated with exporting countries, and the distribution of rights to export at the lower tariff rate left to the exporting country to administer. This would mean that the scarcity value created by the TRQ would accrue to the

exporting country. While TRQs are not generally applied in this fashion, the possibility may have a certain amount of merit in the context of the alternative for new multilateral disciplines on safeguards discussed in Chapter 4.

TRQs are comparatively rare in the context of safeguard protection. Over the period 1975-87, there were only 5 instances where TRQs were used. Their significance in terms of the amount of protection provided is magnified, however, by the fact that TRQs have by far the longest duration of the various types of safeguard measures. From 1975-87, the average duration was over 7 years; during 1975-79, the 4 TRQs used to provide safeguard protection averaged almost 9 years in duration, as compared to only 2 years each for the tariff-based measures and customs procedures and just over 3 years for the global quotas used in that period. Although TRQs made up only 2.5% of the total number of safeguard actions over 1975-87, they accounted for almost twice that proportion of the total number of years of safeguard protection provided.

All TRQs observed were notified to GATT under Article XIX. As a form of tariff-based measure, TRQs could be deemed to be consistent with the overall GATT objective of reliance solely on tariffs. However, in terms of their impact on adjustment, their use has been seriously deficient because of the unusually long duration of protection provided. One study has touted the potential advantages of TRQs as appropriate instruments for replacing more restrictive and

damaging methods of protection.^[17] Careful consideration would have to be given to any such suggestion in the context of new disciplines on safeguards, given experience to date.

Voluntary Export Restraints and Other Selective Quantitative Restrictions

Countries frequently take safeguard actions which limit the quantity of imports that may enter the country from particular exporting countries. Canada and the U.S. used this sort of safeguard action against imports of Japanese automobiles starting in the early 1980s. These actions are in contravention of the MFN principle of GATT, which, as discussed in Chapter 2, extends implicitly to Article XIX. Most often, these selective quantitative restraints are put into effect pursuant to some sort of discussions with the exporting countries. Where these discussions lead to more or less formal agreements, the measures are commonly known as voluntary exports restraints (VERs) or orderly marketing arrangements (OMAs).

In other instances, no formal agreement is struck but "indicative export ceilings" are noted between the parties to the discussion. In such cases, there is a more or less implicit understanding that exports in excess of these indicative levels will precipitate more direct trade actions, negotiated or otherwise. Discussions may also produce only an agreement to jointly "monitor" trade and market developments, or an understanding on minimum prices,

either of which may carry with it similar implications of subsequent, more direct action. In still other instances, agreements may be reached between industry associations in the importing and exporting countries, with or without the collusion of their respective governments. Finally, countries may impose selective restraints without any clear link to negotiations with exporting countries, but with some degree of tacit acceptance on their part.

Safeguard actions under this heading clearly range along a spectrum from the more precise, formal VERs to the less obviously restrictive joint monitoring agreements. The distinctions between them, while they may be of great importance to the tenor of trade relations between the parties, are less important in economic terms. For an implied threat of further, more restrictive action, however congenial the discussions in which it is made, may carry with it consequences for domestic producers, consumers and exporters very similar to those of a more formally negotiated restraint. In both cases, an exporting country that exceeds the restraint level or indicative ceiling does so in the knowledge that there may be serious consequences for its future exports. Similarly, in terms of their legal status under GATT, while informal discussions about export levels may not contravene GATT rules in the same sense as negotiated VERs, their contemplated objective is necessarily outside of GATT discipline. For the purposes of this paper, the safeguard actions under this heading will be referred to generically as VERs.

The effects of VERs are similar to those of global quotas, in that the price increases to consumers and the transfers to producers may be higher in circumstances where markets are growing or where market power exists or emerges. The perverse effects of product upgrading may also occur under VERs. However, from the point of view of the development of multilateral disciplines, there are three important differences between global quotas and VERs.^[18]

First, since it is the government of the exporting country that distributes quota allocations under most VERs, the value of those allocations accrues to the exporting country. The increase in the price of imports benefits the exporting firms or their government, depending on whether firms must pay for their allocations, in addition to firms in the importing country. Under certain conditions, it is possible for a VER to produce a higher market share for exporters, as well as higher profits for both exporters and domestic producers (although the total market is smaller, as with a tariff or a quota).^[19] The system of distributing allocations under a VER is therefore very likely to create vested interests on the part of exporters in the continued operation of the restraint; VERs may well become more "voluntary" as time goes on. A VER may, as a consequence, gain support over time from both the domestic industry it is designed to protect and the foreign exporters it is intended to restrain. The result of this interaction between economic effects and political motivation is that VERs "establish incentives for their

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

perpetuation, both on the part of the domestic industry and on the part of exporters lucky enough to hold quota rights."^[20]

The second difference between global quotas and VERs is that the latter, by limiting imports from selected countries, permit consumers to switch their purchases to imports from uncontrolled countries. Such diversion of trade flows has two important consequences: it results in reduced aggregate welfare for the importing country, which now obtains imports from new, less efficient sources; and it puts pressure on the importing country to maintain the intended level of protection afforded by the original safeguard action by expanding the VERs to cover the new sources of imports.

Third, VERs are attractive to the government of the importing country as a practical tool in the management of trade relations. The use of a negotiated VER avoids any need to consider payment of compensation, as might be the case if an Article XIX action were taken. Compensation is generally effected through tariff or other trade concessions on other goods traded with the suppliers of the good receiving safeguard protection. Apart from possible technical problems in calculating appropriate compensation, compensation obliges the importing country's government to gain a sense of which domestic industries would be least likely to object to reduced protection in order to increase protection for the industry receiving safeguard protection. Where imports affecting the complaining industry are particularly large, it may be difficult to devise a

compensation package that doesn't create more domestic political pressures than it alleviates. Exporting countries may also be loath to accept compensation for fear that it might legitimize the safeguard measure. Finally, in terms of relations with the exporting countries, the use of a negotiated restraint agreement helps prevent the escalation of a bilateral trade conflict.

Relative to global quotas, VERs generally provide less benefit to domestic producers and are more damaging to the adjustment process in the importing country. Since VERs allow leakage of domestic demand toward new sources abroad, the government of the importing country faces constant pressure to expand the restraints to cover additional foreign suppliers. Protection of the U.S. steel industry, for example, initially involved VERs with Japanese and EEC producers in the late 1960s, but progressively expanded to include newly-industrializing countries such as Brazil, Mexico and South Korea.^[21] Lobbying for the expansion of protection to new sources may come to occupy increasing amounts of time and effort on the part of the domestic industry, which may make its investment and production decisions contingent upon the degree of protection prospectively available in specific market segments or product lines. The industry's lobbying efforts may be supported by currently restrained exporters, who often stand to gain by preserving current VERs. The element of discrimination in VER regimes often makes necessary new and more burdensome documentation requirements in order to distinguish between imports from restrained and unrestrained sources

and to monitor the latter to determine if they are undermining the restraint regime. On balance, the built-in bias toward permanence and expansion to new sources, and the reduced aggregate welfare for the importing country make VERs the least preferable and most pernicious form of safeguard protection.

VERs are also the most common form of safeguard protection. Of the 202 safeguard actions taken over the period 1975-87, 127 of them, or 62.9% of the total, were VERs or similar measures as described above. (These figures exclude restraint agreements negotiated under the MFA.) Half of these were relatively straightforward restraint agreements, while about one-quarter involved import or export monitoring understandings of some kind. Seven VERs were negotiated involving minimum price undertakings of some kind.^[22] VERs are the only category of safeguard protection with a sharp increase in frequency in recent years, with a total of 55 actions in 1985-87, compared to just 36 actions in each of the two preceding five year periods.

The average duration of safeguard protection provided by means of VERs during 1975-87 was 4.1 years, which is greater than that of any other type of safeguard protection with the exception of TRQs (of which there were only 5 cases during that period). In the period five years previously, the three safeguard actions using VERs had an average duration of over sixteen years, the highest average of any type of measure in a five year period, again with the exception of

TRQs (represented by a single action in the period 1965-69). VERs also account for a disproportionately large number of the safeguard measures with the very longest durations. Of the 11 measures initiated from 1975-87 with durations of 10 years or more, 9 were VERs.

Virtually none of the VERs observed were notified to GATT, presumably because their selective nature violates the basic MFN principle.^[23] Moreover, as noted above, part of the appeal to importing countries of using VERs to provide safeguard protection is precisely that they allow countries to avoid GATT disciplines, in particular retaliation and/or the need to offer compensation, as well as the notification obligation, which does not extend to VERs. The fact that VERs are the most common form of safeguard measure speaks volumes about the need for further development of GATT disciplines on safeguards if the relevance and role of GATT in the multilateral trade system is to be maintained.

The Incidence of Safeguard Actions Over Time

The preceding discussion of the effects of the major types of safeguard actions indicates that all of them can have negative effects on the adjustment process to one degree or another. These effects are more pronounced the longer the safeguard measures are in place. The incentive to withdraw resources from declining industries is bound to be reduced for both relatively mobile (labour) and less

mobile (capital) resources, when the protection extends beyond one or at the most two years. By that time, the experience of operating in a protected environment would prompt rational firms and workers to reconsider any earlier ideas of shifting to new economic activities.

The calculations of duration of safeguard measures presented here could be biased downward due to the inclusion in the database of measures which had not yet terminated as of the cut-off date of October, 1987. In fact, for measures taken over the period 1975-87, the average duration of measures still in effect on the cut-off date (4.5 years) is significantly longer than that of the remaining measures (2.5 years). While the comparisons of duration should be ideally be done on the basis of only those measures terminated prior to the cut-off date, this would exclude half of the 202 cases on the database for the 1975-87 period. For this reason, the analysis of duration is conducted using the complete set of cases on the database. (See also Appendix A.)

Some idea of the degree of the effects of safeguards on the adjustment process may be gleaned from the average duration of actions taken in recent years: 3.7 years over the period 1975-87. Table 3.7 shows that the average duration for each of the major types of safeguard measures ranges from 2.3 years for tariff-based measures to 7.3 years for TRQs. VERs, by far the most common type of safeguard measure, last on average for over 4 years. All four major users of safeguards, the EEC, the U.S., Australia and Canada, use

TABLE 3.7

AVERAGE DURATION OF SAFEGUARD ACTIONS
BY COUNTRY AND TYPE OF MEASURE
(1975-87)

	Tariff-Based	TRQs	Customs	Global	VERs, Other	XIX	Non	Total	
	Measures		Proc.	Quotas	etc.		XIX		
Australia	2.9	7.3	2.6	3.0	4.8	-	4.0	4.8	4.0
Austria	-	-	-	0.4	6.7	-	0.4	6.7	3.6
Benelux	-	-	-	-	5.6	-	-	5.6	5.6
Canada	0.5	-	0.2	3.2	3.9	-	2.4	3.9	3.1
Chile	2.5	-	-	-	-	-	2.5	-	2.5
EEC	2.8	-	3.4	1.0	4.7	0.8	1.5	4.8	4.1
Finland	1.8	-	-	-	-	-	1.8	-	1.8
France	-	-	-	-	4.8	5.0	-	4.9	4.9
Germany	-	-	-	-	3.0	-	-	3.0	3.0
Iceland	-	-	1.9	-	-	-	1.9	-	1.9
Italy	-	-	-	-	4.8	7.0	-	5.9	5.9
Japan	-	-	7.8	-	3.9	-	-	4.6	4.6
New Zealand	-	-	0.9	-	-	-	0.9	-	0.9
Norway	-	-	-	3.2	4.1	-	5.4	3.7	3.9
Portugal	-	-	-	-	1.8	-	-	1.8	1.8
S. Africa	1.9	-	-	-	-	-	1.9	-	1.9
Spain	-	-	-	-	4.2	0.7	0.7	4.2	3.0
Sweden	-	-	-	-	5.0	-	-	5.0	5.0
Switzerland	0.1	-	-	-	-	-	0.1	0.1	0.1
U.K.	-	-	-	-	7.8	-	-	7.8	7.8
U.S.	3.6	-	-	5.0	3.4	-	3.8	3.4	3.5
N/a	2.5	-	-	-	3.4	-	-	3.3	3.3
XIX Actions	2.5	7.3	1.6	2.8	3.2	0.8			2.8
Non-XIX Actions	0.9	0.0	6.8	1.0	4.1	6.0			4.1
TOTAL	2.3	7.3	3.0	2.7	4.1	3.4	2.8	4.1	3.7

Source: See Appendix A.

safeguard measures for an average of more than 3 years; two of them, the EEC and Australia, provide safeguard protection on average for 4 years or more.

However, industries facing injury from import competition often claim that safeguard protection must be made available for more than a year or two if it is to enable them to regain competitiveness so as to be able to compete without protection or other government assistance. This claim amounts to asking that the adjustment process be put on hold for a period sufficiently long to allow the industry a breathing space which it could use to "catch up" with competitive developments in the marketplace. Notwithstanding the questionable merits of using temporary protection to provide such a breathing space, as discussed above, such a claim could be credible in objective terms on condition that it is not made repeatedly. On the other hand, if a request for safeguard protection is made more than once, it may be assumed that the industry in question faces longer term structural problems that cannot be resolved through the use of safeguard measures to allow it time to catch up.

Experience with safeguard actions shows that in the majority of cases, safeguard protection is in fact given repeatedly to the same industry or group of industries. In 62% of the cases where safeguard protection was granted by a country over the period 1975-87, the same industry (defined in most cases at the full 4-digit level of the Standard Industrial Classification, or SIC) was again granted

protection by that country at a later date. (For the period 1950-87, safeguard protection was granted repeatedly by a country to the same industry in almost two-thirds of cases .) [24]

Even in those relatively rare cases where safeguard protection is imposed only once by a country for a given industry, other countries frequently impose safeguard protection in that industry. Of the 76 cases in which safeguard actions are unique to a particular industry and country, over half are either preceded or followed by the granting of safeguard protection in the same industry by another country within two years of the original action. There are at least two possible explanations for this pattern. First, circumstances that prove to be unique in one country may be duplicated in another country, which is then prompted to take a safeguard action. Second, safeguard actions taken by one country may have spillover effects, whereby actual or potential trade diversion as a result of the initial trade restriction prompts third countries to enact restrictions of their own. One example where both explanations likely played a part was the use of a VER on Japanese automobiles by the U.S. in March, 1981, following which Canada negotiated its own VER with Japan later that year. While it is impossible to establish with any accuracy if there is any general causal link between the original and the subsequent cases, this pattern provides some further evidence of the relative rarity of situations in which safeguard measures are taken in response to situations that are truly unusual and relate to unforeseen "emergencies".

TABLE 3.8

REPEAT INCIDENCE OF SAFEGUARD ACTIONS
BY COUNTRY AND TYPE OF MEASURE
(1975-87, in percentages)

Tariff-Based Measures	TRQs	Customs Proc.	Global Quotas	VERs, Other etc.	XIX	Non XIX	Total		
Australia	50.0	20.0	50.0	77.7	0.0	-	55.0	0.0	52.3
Austria	-	-	-	0.0	0.0	-	0.0	0.0	0.0
Benelux	-	-	-	-	0.0	-	-	0.0	0.0
Canada	50.0	-	100.0	75.0	62.5	-	72.7	62.5	68.4
Chile	0.0	-	-	-	-	-	0.0	-	0.0
EEC	100.0	-	85.7	50.0	84.4	100.0	76.9	85.1	83.3
Finland	0.0	-	-	-	-	-	0.0	-	0.0
France	-	-	-	-	0.0	0.0	-	0.0	0.0
Germany	-	-	-	-	0.0	-	-	0.0	0.0
Iceland	-	-	0.0	-	-	-	0.0	-	0.0
Italy	-	-	-	-	0.0	0.0	-	0.0	0.0
Japan	-	-	100.0	-	50.0	-	-	60.0	60.0
New Zeal'd	-	-	0.0	-	-	-	0.0	-	0.0
Norway	-	-	-	100.0	42.8	-	100.0	50.0	55.5
Portugal	-	-	-	-	0.0	-	-	0.0	0.0
S. Africa	66.6	-	-	-	-	-	66.6	-	66.6
Spain	-	-	-	-	50.0	100.0	100.0	50.0	66.6
Sweden	-	-	-	-	0.0	-	-	0.0	0.0
Switz.	100.0	-	-	-	-	-	100.0	100.0	100.0
U.K.	-	-	-	-	0.0	-	-	0.0	0.0
U.S.	28.5	-	-	0.0	75.0	-	40.0	73.3	65.0
N/a	0.0	-	-	-	64.7	-	-	61.1	61.1
TOTAL	46.1	20.0	66.6	68.0	66.1	50.0	55.8	65.6	62.3

Note: Each cell entry denotes the percentage of total actions for which there is a repeat incidence (i.e. the percentage of non-unique actions).

Source: See Appendix A.

Table 3.8 shows, for each type of measure used by each country, the percentage of all safeguard actions that are repeated in the same industry, either by the same country or, within two years of the initial action, by another country. All of the major types of measures exhibit repeat incidence of 50% or more. Quantitative restrictions, whether VERs or global quotas, show the highest repeat incidence, with 66% and 68% respectively. Measures taken outside Article XIX have significantly greater repeat incidence than those taken under GATT rules. Among the four major users of safeguards, only Australia, 95% of whose safeguard actions are notified under Article XIX, shows repeat incidence of less than 50%, and then only marginally so. The only countries with no repeat incidence are those that have used safeguard fewer than 4 times. It would seem that the more countries use safeguards, the more the actions tend to be repeated.

Also of some interest is the frequency with which the various instruments of safeguard protection are used in the relatively rare instances where actions are not repeated. In the group of 22 safeguard cases where subsequent protection is granted neither by the original country nor by another country within two years, the proportion of VERs is about one-half their proportion of total cases. While it is difficult to draw any firm conclusions from such a small group of cases, this pattern is consistent with the argument that VERs are more likely to be perpetuated than other instruments of safeguard protection.

The very high rate of re-occurrence of safeguard protection once granted by a country gives some empirical substance to the theoretical time inconsistency problem facing public policymakers. The offering of safeguard protection to an industry seems to favour the perpetuation of the political and economic conditions, or the creation of new but similar conditions, such that further requests for safeguard protection may be expected to be granted, more often than not. Where the remedy is repeatedly requested, it must be judged to have been ineffective in its initial application. The "emergency" or temporary nature of safeguard protection envisaged in the rules of the GATT is clearly not supported by the facts. While it is not possible to be definitive, the potential of safeguard measures to delay adjustment, together with the evidence on their subsequent incidence, suggests that safeguard are more of a barrier than an aid to successful adjustment.

The high incidence of repeated safeguard protection may also indicate that the problems which give rise to requests for safeguard protection are structural rather than temporary in nature. It is possible that even where there is no problem of time inconsistency related to the effects of the safeguard measures themselves, the conditions that originally gave rise to the request for safeguard action may persist of their own accord. In these cases, the problems afflicting the protected industry may have little to do with any surge in imports and hence are not ameliorated in any lasting way by the safeguard measures employed. Faced with a long-term loss of

competitiveness, it may nevertheless be in the best interests of the firms and workers in the protected industry to lobby for extension or re-imposition of safeguard protection in the hope of accruing economic benefits over at least the short term.

The marked pattern of long duration and repeated incidence of safeguard protection has a very direct bearing on the nature of workable international disciplines. The obvious pressure on countries to extend or expand safeguard protection over time means that a workable discipline must have an continuing or intertemporal dimension to it. Adherence to a set of rules at the single point in time where a decision is made to grant protection cannot alone constitute sufficient discipline. The conditions which give rise to the pressure for protection and the effects of the protection itself must be subject to some measure whose application is on-going rather than limited to that single point in time.

In very general terms, such a measure would entail some form of regular multilateral monitoring of the protected industry and the trade measures being applied by the country or countries involved. The institutional features of such a monitoring process, such as the role and required resources of the GATT Secretariat or the involvement of third countries either singly or via bodies such as the GATT Council, would present thorny problems in themselves. Some of these problems and possibilities have been explored in safeguard negotiations to date (discussed in Chapter 4). The analysis

conducted here of the effects and incidence of safeguard measures suggests that the effectiveness of any new rules on the use of safeguard measures will depend very much on the successful operation of such monitoring mechanisms.

Conclusion

Safeguard measures are closely related to the process of structural adjustment. The concept of injury is not clearly distinguishable in practice from situations in which long-term adjustment pressures are at work, in part because of the incentive for domestic producers to argue at successive points in time that their problems are "temporary" and the time-inconsistency problem facing decision-makers. The relationship between safeguard actions and adjustment is fundamentally one of conflict: the effect of the protection granted on the inflow and outflow of resources in the domestic industry is such that the pressures for adjustment, whether or not related to imports, are relieved by the use of safeguard actions.

From the perspective of international disciplines on the use of safeguard measures, the link to adjustment poses particular challenges. It is not usually possible to establish at the outset of a safeguard action what its effect on adjustment will be, since adjustment is a continuous, on-going process across the domestic

economy. As a result, effective safeguard disciplines will require, in addition to the point-in-time application of rules, the creation of a mechanism to monitor the effects of protective measures over time to determine whether or not adjustment is in fact taking place.

A wide variety of instruments are used to deliver safeguard protection. All serve the basic purpose of a transfer of value by government from consumers and consuming industries to industries requesting relief from import competition. However, different instruments can have widely different effects on the adjustment process, for both economic and political reasons. In terms of international negotiations on safeguards, the wide variety of instruments used means that rigid rules alone are less likely to achieve the desired result, and that the task of developing new international disciplines is more complex

From the discussion in this chapter, it is clear that each of the various safeguard instruments has its pros and cons. In the abstract, it is easy to conclude that certain instruments, for example tariffs, are preferable from the point of view of the aggregate economic welfare of the importing country. Others, such as VERs, may be preferred under certain conditions by exporting country interests. Still others may best serve the interests of domestic producers and importers, as in the case of global quotas allocated in proportion to past imports.

In practice, governments' decisions to put in place safeguard protection are made in the context of a mixture of pressures. Representations from domestic industries claiming to be injured by imports, possible trade relations consequences, concerns about possible cost increases for downstream industries, government revenue considerations, and (less often) concerns over potential impacts on aggregate economic welfare and on consumers may all enter into these decisions. The result is that each one of the available forms of safeguard protection may be seen by governments to have merit in particular instances, depending on which of the above factors are most important.

From the perspective of the health of the international trade system, some forms of safeguard protection are clearly more damaging than others. Tariffs, for example, interfere with the adjustment process in the importing country by allowing firms to raise prices without fear of losing sales to imports. While this tends to attract resources into the protected industry or slow their outflow, the price effects are binding only up to the level of the tariff. Tariffs generally carry costs that are lower than those of other forms of safeguard protection in terms of the economic welfare of the importing country. Unfortunately, tariffs account for only a small proportion of total safeguard actions, despite the original intention of GATT that tariffs be the main permissible form of trade barrier. Safeguard measures based on customs procedures can be somewhat more costly than tariffs, since they often involve uncertainty for both

domestic producers and exporters as to the degree of protection afforded. Tariff rate quotas, although used only rarely to provide safeguard protection, are a potentially flexible instrument, with effects generally intermediate between those of tariffs and quotas.

Global quotas and VRS are the most problematic forms of safeguard protection. While global quotas can in theory be administered so as to minimize their effects on the adjustment process, principally by means of allocating quota rights at auction, this takes place very rarely if ever. More commonly, quota rights are allocated according to historical import patterns, creating strong vested interests on the part of individual domestic holders of quota rights in the continuation of protection. The attendant effects on the adjustment process go right down to the level of individual firms, in addition to the more generalized effects related to overall market prices. There may also be perverse effects on domestic producers as a result of product upgrading by exporters operating under volume constraints. This forces firms to adapt their product lines, exacerbating the original adjustment problem. Global quotas and VRS both exhibit a significantly higher incidence of repetition than most other forms of safeguard protection.

VRS can also have these perverse effects on the adjustment process. Moreover, being selective in application, VRS tend to skew the supply of imports to less efficient foreign sources, resulting in greater costs than global quotas in terms of the aggregate economic

welfare of the importing country. VERs have the added disadvantage of creating vested interests on the part of established exporters in the extension of protection to cover unrestrained sources. Finally, VERs tend to be accompanied by wasteful lobbying efforts on the part of interest groups aimed at the continuation or re-imposition of protection. The average duration of VERs is significantly longer than that of other types of measures, and they are, unfortunately, by far the most common form of safeguard action.

The pattern of incidence of safeguard measures is not on the whole consistent with their justification on the basis of "emergency" situations facing domestic industries. The duration of safeguard protection is too long on average to be characterized as short term, and the very high degree of subsequent incidence belies such explanations. In practice, either as a result of the time inconsistency problems facing policymakers or the nature of the root problems being addressed, safeguard protection is as much a structural phenomenon as it is a temporary policy response to a particular set of pressures.

Whatever the pressures that governments are responding to and whatever the instrument employed, the use of safeguard actions interferes to some degree with the structural adjustment process that is at the heart of the functioning of the international trade system. Conferring benefits on individual industrial interests by means of safeguard protection is in most cases more inimical to the adjustment

process than not doing so. Without successful adjustment of economic resources into new and more productive activities, the organization of economic activity along the lines of international comparative advantage becomes impossible and overall economic welfare is kept below its maximum potential level. The primary economic justification for the pursuit of trade liberalization is therefore undermined if adjustment is inhibited by the use of safeguard measures.

CHAPTER 4: INTERNATIONAL NEGOTIATIONS ON SAFEGUARDS

The preceding chapter demonstrated the importance of the relationship between structural adjustment and safeguards, in terms of both the underlying pressures giving rise to requests for safeguard protection and the effects of the resulting safeguard actions themselves. The purpose of this chapter is threefold: to examine recent efforts to establish a new multilateral regime for safeguards; to examine the extent to which the importance of adjustment has been reflected in recent multilateral negotiations on safeguards; and to set out some suggestions relating to any new rules on safeguards.

The Tokyo Round Negotiations

The reform of safeguards rules has been under negotiation in one way or another since the Tokyo Round began in 1973. However, the Tokyo Round negotiations on safeguards were not seriously engaged until 1978, less than two years before the end of the Round, when intensive efforts at reaching agreement on a draft text got underway.^[1] This was due in part to the historical difficulty with the safeguards issue, and in part to the general impasse in the negotiations that lasted until mid-1977. However, the delay also appears to have reflected a view on the part of participants that they should move forward on the more positive areas of the overall negotiations first, and that "the safeguards negotiations ought not

to proceed faster than other areas in the negotiations. At bottom, safeguards are a restrictive action, and it was successfully argued that the participants should make progress on the liberalizing aspects of the Tokyo before they negotiated measures that might reduce the scope of that liberalization."^[2]

There is some logic to this approach, in the sense that the rules from which it might prove necessary to derogate should be established before developing rules to govern such derogations. The 1973 Tokyo Round Declaration itself also seems to cast the safeguards issue in a secondary or derivative role:

Negotiations should ... include an examination of the adequacy of the multilateral safeguard system, considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results....
[3]

This language reflects the traditional "contractual" view of Article XIX that provided the original rationale for its inclusion in the General Agreement, i.e., that it is necessary to allow for an escape from obligations undertaken in order to encourage nations to liberalize their trade policies in the negotiations in other areas. The framers of the Tokyo Round declaration did go somewhat further than the traditional view by envisaging negotiations on VTRs and other restrictive discriminatory arrangements (now referred to as grey area measures) that were proliferating even then and endangering the GATT system. However, there was no clear consensus at the start

that these were the central concerns of the safeguard negotiations. Initial discussions on grey area measures in fact took place in a separate group charged with negotiations on non-tariff measures, and later in a sub-group on quantitative restrictions. The safeguards issue per se was viewed to a large extent as one of revising Article XIX so as to tighten up the existing rules.

To judge from the principal positions adopted by the participants, the issue of adjustment was peripheral to the Tokyo Round negotiations on safeguards. The first major submission by the U.S. listed a range of "serious weaknesses which have become evident in the operation of the present GATT Article XIX safeguard system", but did not include among them any reference to adjustment, either in terms of the causes or the effects of safeguard actions.^[4] The safeguards code outlined in the U.S. proposal contained only loose commitments on adjustment, to the effect that "safeguard actions should be accompanied by efforts of the domestic industry to adjust", and explicitly rejected any concept of imposing obligations on invoking countries in respect of adjustment, other than to communicate its results. The standing committee proposed by the U.S. had no functions in relation to monitoring of adjustment. Submissions from Japan and the EEC also rejected the idea of any obligation to provide adjustment assistance; the EEC went so far as to object to even a requirement to report on adjustment. A submission from Canada, focusing on particular Canadian concerns in the area of horticultural products, averred that in this area

"adjustment is manifestly irrelevant", and more generally that "adjustment is perhaps not so important a consideration" to the extent that Article XIX is invoked for short-term situations only.^[5]

One of the few instances in which adjustment was raised directly during the substantive negotiations in a more positive fashion was on the question of whether adjustment assistance ought to be mandatory.^[6] In a text submitted in early 1978 (the central theme of which was opposition to selectivity), a group of developing countries argued that safeguard measures invoked by developed countries that limited imports from developing countries ought to be accompanied by adjustment assistance measures.^[7] The idea that adjustment assistance delivered by governments can offset the effects of safeguard protection reflected some appreciation of the importance of adjustment, albeit as part of the solution rather than the root of the problem being addressed in the negotiations. In the event, the LDC proposal on adjustment assistance did not become a central element of the negotiations, nor did it form the basis for any in-depth discussion of the broader issue of adjustment.

The LDC text was soon overtaken by events, in particular the submission of a text by a group of developed countries that became the main focus for the remainder of the negotiations.^[8] That text made even less direct mention of adjustment than the earlier submissions, even in the bracketed portions on which participants were unable to reach agreement. A final text, produced by the GATT

Secretariat on its own responsibility at the request of the Group on Safeguards, contained heavily qualified, minor references to adjustment in provisions relating to degressivity of measures and to notification of extension of an action.^[9] That text was subsequently rejected by the Group.

The evidence from the negotiating record indicates that as the negotiations got down to short strokes, questions of how safeguard measures derived from efforts to handle adjustment pressures and of their effects on the adjustment process were given increasingly short shrift, at least in direct terms. The relationship between the elements under discussion and the adjustment issue was subsumed for the most part in attempts to elaborate on the traditional contractual interpretation of Article XIX as an escape clause in the General Agreement.

Although it is not the purpose of this paper to provide an exhaustive, blow-by-blow account of the debates on all the elements in the Tokyo Round safeguards negotiations, some sense of the principal matters under discussion is necessary in order to put the adjustment element of the safeguards issue in perspective.^[10]

The question of selectivity overwhelmingly dominated the Tokyo Round negotiations on safeguards. The strongest proponent of allowing non-MFN application of safeguard measures was the EEC, with the strongest opponents being the developing countries along with

Japan. Concern over selectivity was especially pronounced among the more advanced developing countries, which were often the target of selective measures such as VERs. The European view, perhaps based on the uneven impact of trade on the diverse nations that comprise the Community, was that at its root, the safeguards issue stemmed from an accumulation of specific pressures, and as such it should be dealt with by means of selective measures.

The other main protagonist in the safeguard negotiation (as in the rest of the Round) was the U.S., which took a much more ambivalent position on selectivity. This was no doubt due in some measure to the fact that while it was traditionally a staunch defender of the MFN principle, the U.S. had relied in several instances on selective safeguard actions, for example the VERs against Japanese and European steel imports beginning in the late 1960s. The U.S. advocated at one point in the negotiations a form of "consensual selectivity", under which non-MFN actions would be permitted only with either the agreement of the exporting country or countries or the prior approval of a Committee on Safeguards. Although this suggestion met with some limited support from developing countries, it did not satisfy the EEC, which insisted on a degree of freedom to impose selective measures unilaterally.

Winham (1986) argues that the selectivity debate was, at its root, a "question of who adjusts to whom in the context of today's changing world economy."^[11] The push for selectivity was an attempt

by developed countries to "force developing-countries exporters to adjust to a pace of change that would not create dislocation in competing industries in the developed countries." It in fact this was the motivating factor behind the developed country position on selectivity, it at least shows some recognition that adjustment is at the root of the safeguards issue, albeit in a circumspect and wholly defensive fashion.

The surveillance issue received a good deal of attention in the Tokyo Round, but unfortunately it was for the most part bound up with the question of selectivity. Discussion centred on whether selective actions should be subject to more onerous requirements for notification, a priori approval, and review than actions taken on an MFN basis. Both the texts produced by the Secretariat and the majority of countries' submissions contemplated monitoring mechanisms aimed primarily at the application of the safeguard measure itself. Although some obligations were envisaged to report on the effects of safeguard measures and on the continuing rationale for their use, there was no suggestion to include their broader implications for the adjustment process in the mandate of a standing surveillance body.

The rationale behind the degressivity element of the Tokyo Round safeguard negotiations is also related to adjustment. A requirement for degressivity, or progressive liberalization during the period of application of a safeguard measure, would contribute importantly to the reduction of the negative effects of a safeguard measure on the

adjustment process. The provision in the 1978 integrated text even makes reference to purpose of the degressivity requirement as the encouragement of "adjustment of domestic producers to import competition". The 1979 text prepared by the Secretariat went further in requiring that "appropriate policy measures be taken to encourage adjustment". However, in both cases, the draft provisions required degressivity only to the extent feasible, a qualification that reflected the unwillingness of participants to undertake any mandatory obligations regarding adjustment generally.

The concept of limiting the allowable duration of safeguard measures can also be viewed as related to the role of adjustment as both a cause and a result of safeguard actions. No matter how protectionist it may be, a measure that is known in advance to be in effect for only a short period and is actually terminated after that period has expired will not interfere with the adjustment process to any great extent. Economic actors who see new or continued opportunities as a result of the measure will not be led to maintain or increase their current level of activity in an industry if they believe their potential gains to be more short-lived than the costs of investments required to exploit those opportunities.

However, the draft provisions on duration in the 1978 and 1979 texts link the time limit to the period necessary to remedy serious injury to domestic producers. As pointed out in Chapter 3, the concept of injury is closely related to the difficulties experienced

by domestic producers in the adjustment process. The linkage in the draft provisions is therefore tautological insofar as any positive effect on adjustment is concerned: a safeguards agreement would not promote adjustment if it permitted actions to be maintained as long as injury is present. While the participants did contemplate an upper limit on the duration of safeguard actions, the 1979 text proposed allowing safeguards for as long as five years, which would seriously reduce the value of a duration provision from the perspective of encouraging adjustment.

It is of some interest that the final negotiating documents in the Tokyo Round omitted any reference to a requirement that safeguard actions be taken only where injury can be linked to previous concessions or obligations undertaken and to unforeseen developments. This can be taken as a sign of progress in the negotiations to the extent that it implies at least a tacit recognition that the safeguards issue was not at its root a matter of the traditional "contractual" concerns.

Nonetheless, by any objective yardstick, the Tokyo Round negotiations on safeguards must be judged a failure. Not only did they fail to produce an agreement on an important component of the Round as a whole, but they also failed to pave the way for fruitful discussions in future. The preoccupation with selectivity obscured debate over the value, specifically in terms of the adjustment process, of comprehensive disciplines on safeguard actions. The

merits of incorporating rules to cover grey area measures were not sufficiently attractive to participants when stacked up against the preservation of the MFN principle that is at the core of the GATT system. The preoccupation with selectivity left the safeguards issue as one on which countries taking one position or the other were characterized as either "giving in" or "holding fast" in the face of pressures on the GATT as the central element in the international trade system. This false dichotomy has not been conducive to the conduct of forward-looking negotiations.

Post-Tokyo Round Developments

In the period following the conclusion of the Tokyo Round negotiations, there was increasing concern among GATT members over what became known as the "New Protectionism". The need to arrest the trend in the early 1980's toward trade restrictive actions in sectors such as steel and automobiles and to strengthen the authority of the GATT gave rise to a consensus that a Ministerial-level meeting, the first since 1973, should be held on the occasion of the 1982 annual meeting of the GATT Contracting Parties. As Stone (1984) notes, "the meeting was designed, in part, to address a number of specific issues left over from the Tokyo Round, including ... an understanding on the use of safeguard measures under GATT Article XIX."^[12]

Initially, there were high hopes for the Ministerial meeting. The U.S. called for the launching of a new Round, a main task of

which would be the negotiation of a safeguards code.^[13] However, it soon became apparent that it would be difficult to push ahead with a major international negotiation in the recessionary economic conditions then prevailing world-wide. Expectations of concrete achievements were scaled back accordingly, and the Ministers ultimately contented themselves for the most part with general reaffirmations of existing commitments and statements of good intentions. On safeguards, the Ministerial meeting was unable to make any concrete progress. Discussion once again broke down on the selectivity issue. Ministers agreed only that further efforts would be made at negotiating and adopting a safeguards code within one year. A year later, agreement was still not in sight.^[14]

In terms of progress toward the development of new disciplines on safeguards, the 1982 Ministerial is of interest not so much because of the failure to reach agreement on a new safeguards Code but because of the work program it set in train. Although the Ministerial meeting did not lead to the launching of a new GATT round, some signs of progress were evident on the adjustment front during 1983. The Consultative Group of Eighteen (CG-18), a GATT body which "serves as a forum for regular consultations on broad trade-policy developments and provides general direction to the GATT program of work",^[15] agreed to set up a Working Party on Structural Adjustment. The report of this group contained some unusually forthright commentary on the dangers for the GATT system of rigidities that allow adjustment pressures to accumulate, and

stressed, inter alia, the importance of implementing the safeguards element of the 1982 Ministerial Declaration to furthering the goal of trade liberalization.^[16]

However, the conclusions of the Working Party report were quite modest and conservative, in particular the finding that "the main contribution that the CONTRACTING PARTIES could make to the adjustment process would be to abide by their obligations under the GATT, to ensure strict adherence to GATT rules and to support and improve the GATT trading system...."^[17] The report was essentially a compromise document in which the question of moving forward on issues such as safeguards was essentially not addressed: "The Working Party considered that the GATT should continue to focus attention on the question of structural adjustment and its relation to trade [and] recommends that the Council decide how the above might be undertaken."^[18]

On balance, the work conducted in the aftermath of the 1982 GATT Ministerial did not move the safeguards issue forward very much. In May 1984, the CG-18 gave a very discouraging report on its follow-up to the Ministerial Declaration in the area of safeguards:

The group has since finished its discussion of the six elements identified by Ministers in the November 1982 Declaration.... The basic problem holding up progress in these discussions is that the divergence of view between delegations which favour the selective application of safeguard measures and those opposed to it remains unresolved. There has also been no perceptible change of positions on the question of disciplines. The informal talks

have not yet given signs of the political will that would be necessary to open new prospects for overcoming these difficulties. [19]

United States/Canada Bilateral Progress on Safeguards

In an effort to deal with at least some of the trade problems created by the use of safeguard measures, Canada and the United States concluded a modest bilateral understanding on safeguards in early 1984. The document was intended to facilitate the resolution of differences between the two countries over the interpretation of GATT Article XIX, which in the past had led to "disagreements between Canadian and United States authorities respecting the application of safeguard actions." [20] Its main provisions related to notification and consultation procedures, and were essentially reaffirmations and extensions, on a best efforts basis, of the requirements of paragraph 3 of Article XIX (pertaining to compensation and retaliation). The understanding imposed no new substantive constraints on the two countries in taking safeguard action.

The 1984 understanding was of some help in smoothing the path by which Canada and the U.S. came to agreement on at least one safeguard action, by the U.S. on specialty steel, affecting bilateral trade. Following consultations under the framework provided by the understanding, Canada suspended concessions on U.S. exports pending payment of adequate compensation by the U.S. without aggravating an irritant in bilateral relations. In one other important case,

however, the understanding failed to prevent a potentially serious bilateral irritant from emerging. In May, 1986, shortly after negotiations on a bilateral free trade agreement were launched, the U.S. took a safeguard action, in the form of a 35% tariff, against Canadian exports of cedar shakes and shingles. In spite of the bilateral understanding, this action created a problem for the Canadian government at a time when the climate for bilateral trade relations was more propitious than it had been in many years.

The provisions of the Canada-U.S. Free Trade Agreement (FTA) relating to safeguards are of some interest in the context of the development of new multilateral disciplines. In Chapter 11 of the Agreement, the two countries agree to limit the application of safeguards to their bilateral trade a) to the use of tariff measures only; b) to actions lasting no more than three years; and c) to the 10 year transition period only. No bilateral safeguard actions are permitted after 10 years. In keeping with the provisions of GATT Article XXIV allowing the formation of free trade areas, the Agreement also establishes preferences for Canada and the U.S. in respect of safeguard actions aimed primarily at the trade of third countries. Each is required to exempt the other Party's exports from any global safeguard action under GATT Article XIX "unless imports from that Party are substantial and are contributing importantly to the serious injury or threat thereof caused by imports."^[21] The meaning of the term "substantial" is narrowed somewhat by a provision that imports from a Party that are "in the range of five to ten

percent or less of total imports would normally not be considered substantial." Chapter 11 also prohibits the application to the trade of the other Party of global safeguard actions that would have the effect of reducing imports below their recent trend, and requires prior notice and consultation. In the event of a dispute, Chapter 11 provides for dispute settlement procedures and, ultimately, for binding arbitration (under Article 1103) at the request of either country.

In terms of lessons for the development of new multilateral disciplines on safeguards, the Canada-U.S. Free Trade Agreement is silent on the key question of adjustment. There are no direct or indirect references to adjustment in Chapter 11. However, it is worth noting the importance of its procedural provisions. The availability of binding arbitration to resolve any disputes is particularly important given the room for varying interpretations inherent in the use of a "range" to "normally" determine when one Party should be excluded from a global action by the other Party. The clear scope for disagreement on the meaning of these substantive terms in the Agreement itself places a premium on the procedures for their subsequent interpretation. To the extent that a new multilateral agreement on safeguards contemplates similarly loose provisions regarding the use of selective safeguard measures, dispute settlement mechanisms will play an equally important role.

The Uruguay Round

The Ministerial Declaration launching the Uruguay Round of multilateral trade negotiations contained an elaborate statement on safeguards:

- (i) A comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations.
- (ii) The agreement on safeguards:
 - shall be based on the basic principles of the General Agreement;
 - shall contain, inter alia, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement; and
 - shall clarify and reinforce the disciplines of the General Agreement and should apply to all contracting parties.^[22]

The Declaration represents some improvement over the earlier state of paralysis in the safeguard discussions following the 1982 GATT Ministerial. The length and degree of detail in the statement on safeguards are evidence that there is agreement on an agenda for new negotiations that is more than a commitment to negotiate. The recognition of the importance of a resolution of the safeguards issue to the GATT system is an indication that negotiations are intended to proceed beyond the traditional contractual purpose of providing an escape valve in order to encourage countries to commit to further trade liberalization. The safeguards issue is seen in its own right

as meriting the formulation of new multilateral rules. Finally, there is direct acknowledgement of the need to consider adjustment as an element of the negotiations, albeit perhaps only in connection with the degressivity element. This is clearly positive insofar as it will push countries to address the issue in their submissions.^[23]

At the Uruguay Round mid-term review meeting in Montreal in December, 1988, safeguards emerged as one of four issues (along with agriculture, textiles and clothing, and intellectual property) on which it proved impossible to reach agreement on a framework for further negotiation. Once again, the selectivity issue appears to have been at the heart of the dispute over the wording of the Chairman's Text that was to have been agreed upon for the mid-term meeting. India, with the apparent support of a number of other developing countries, insisted on language that would have precluded negotiations on anything other than strictly MFN safeguard actions.

Meetings at the officials level over the succeeding four months eventually produced agreement on a compromise text at the April, 1989 meeting of the Trade Negotiations Committee (TNC), the oversight body for the Uruguay Round. It stresses "the importance of ... re-establish[ing] multilateral control over safeguards, inter alia, by eliminating measures which escape such control."^[24] This wording implicitly recognizes that the Negotiating Group must deal with the issues of selectivity and grey area measures but does not introduce any direct or indirect indication that Group must consider relaxing

the strict application of the MFN principle. Despite the rather clever drafting, however, the April, 1989 text merely avoided a procedural obstacle to further negotiation without contributing in any substantive way to the resolution of the issues under negotiation.. The substantive work was left to the Chairman, who was charged with drawing up a draft of a comprehensive agreement on safeguards as a basis for negotiation.

In June, 1989, the Chairman of the Negotiating Group tabled a draft text which "based on proposals by participants" and taking into account "the debates so far held in the Negotiating Group, suggestions made by participants in private consultations and provisions of the General Agreement".^[25] A number of elements, including duration, degressivity, serious injury, surveillance and dispute settlement, are also dealt with in some detail in the Chairman's paper. As regards adjustment, however, the Chairman's paper represents very little movement beyond the positions put forward by the LDC paper in the Tokyo Round. The paper cast the issue entirely in terms of requirements and conditions for the provision of adjustment assistance by the governments of countries invoking safeguard measures, as opposed to the actual adjustment performance by the protected industries.

On the key question of selectivity, the paper stipulates that actions be on an MFN basis but flags, by means of a footnote, the need for the Group to:

examine the possibility of exceptions to this requirement, to be applied in special situations ... on a mutually agreed basis, subject to adequate guarantees for all exporting countries and stricter disciplines and surveillance in order to prevent abuse.^[26]

This goes beyond the April, 1989 text in that it explicitly provides for the Group to consider allowing selective actions under conditions to be specified, with mutual agreement, and subject to stricter disciplines.

Based on the discussion in this chapter of the history of multilateral safeguard negotiations, a protracted debate on selectivity in the Uruguay Round could well preempt any chance for agreement on new rules. Although the debate over selectivity to date seems to have been conducted largely in terms of the sanctity of the MFN principle, it is worthwhile to review the actual role this principle plays in the GATT system. It serves essentially five main purposes:^[27]

- i) For a given level of tariff protection, non-discrimination as between supplier countries promotes the most efficient allocation of resources internationally, by allowing the price mechanism to function as between different sources of imports;

- ii) MFN treatment promotes greater fairness in international trade relations by attenuating the influence of a nation's size or power (or lack thereof) relative to its trading partners on the conduct of trade policy;
- iii) By requiring countries to multilateralize trade concessions negotiated bilaterally, the MFN rule acts as an automatic mechanism for the extension of trade liberalization;
- iv) MFN treatment ensures that a country entering into negotiations with its trading partners under GATT auspices gets the "best available deal"; and
- v) Transparency and simplicity of administration are increased by requiring that countries treat all trading partners equally.

Hudec (1988) compares the place of the MFN principle in the context of the historical motivations that gave rise to its insertion in the GATT in 1947 and its role in the current international trade system.^[28] Although he does not dispute the validity of the purposes served by the MFN principle as described above, he argues that many of the original reasons for insisting on MFN treatment are no longer as straightforward or compelling as they once were.

In terms of encouraging further trade liberalization, for example, the MFN principle was originally seen in part as method of

avoiding the potential chilling effect on tariff bargaining of the late 19th century system of short term, unbound tariff treaties. Under that system of one-on-one negotiations leading to short term trade agreements, countries were obliged to insist on unconditional MFN treatment in order to ensure that concessions obtained would not be undercut by a subsequent agreement with another country. Without it, neither further trade liberalization nor the "best available deal" could be ensured, conditions under which few countries would find it advantageous to enter into tariff bargaining. With the introduction under the GATT of simultaneous negotiations leading to permanent tariff bindings, the effect of tariff concessions became cumulative. The role of the MFN principle, while still important in GATT, was no longer the sole means of reducing uncertainty over future negotiating behaviour. Hudec goes so far as to say "the new system created by GATT made it possible to absorb a greater amount of discrimination without chilling tariff negotiations."^[29]

Hudec is also quite sceptical as regards the effectiveness of the MFN principle as a method of enhancing the bargaining leverage of smaller countries in the trade system.^[30] Under the late 19th century system of treaties between several countries of more or less comparable size, alliances could be seriously disrupted by a shift in allegiance on the part of one or more smaller countries. This ability was a real source of power for the smaller countries, enabling them to insist on MFN treatment as the price of maintaining the balance of power. By contrast, with the division in the current

international trade system between a group of very powerful developed countries and another group of very weak developing countries, the latter are in general not positioned to defend themselves from discriminatory actions by means of similar threats. The role of the MFN requirement in attenuating the exercise of relative size and power in trade relation, while still significant in legal terms, now depends rather more on enlightened self-discipline than on calculated self-interest as in the past.

On the specific issue of selective safeguards, Hudec argues that their use is not as serious a problem from the point of view of the integrity of the GATT system as were earlier forms of discrimination^[31]. The beggar-thy-neighbour measures of the 19th century and the 1930s, under which countries attempted to capture special commercial advantage over competitors, were especially damaging forms of discrimination. Governments were often reduced to barter-type arrangements with each other designed to exclude all competition from other sources. The harmful effects of this type of discrimination are felt by all competing suppliers who are excluded. By contrast, the discrimination practiced in recent years more often takes the form of measures such as VERs or similar arrangements, under which unrestrained exporters may actually benefit, and even restrained exporters usually view the outcome as no worse than before the measure was put in place. Indeed, exporters in restrained countries may even be better off, at the expense of consumers in the importing country, by virtue of scarcity value of the newly created

rights to export. Under the GATT system, there has been relatively little discrimination of the more damaging beggar-thy-neighbour sort.

The prospects for dealing with the negative effects of safeguards merely by outlawing selective actions are not good, according to Hudec. Government officials, while accepting the reasoning behind the efficiency and other rationales for MFN and publicly decrying the growth of protectionism, tend to view the continuing growth of world trade as evidence of a reasonably successful open trade system. Existing discriminatory trade restrictions are seen as near the minimum that can realistically be expected given the current pressures of international competition. In the present policy milieu, in which there is an open minded attitude toward discrimination, an approach to new safeguard rules under which discriminatory safeguard actions simply vanish from the menu of options is impossible to achieve. Hudec argues that "the key to action in this area, therefore, will be the ability of critics to generate greater concern, not about the evils of discrimination, but about the overall level of protection in the world."^[32] To put it another way, selectivity may be compared to the dangers of keeping tigers in the house:

Pre-GATT history seemed to teach that tigers are extremely dangerous to life and limb, and critics have been so warning governments ever since. Governments, however, have found a way to tame tigers, and so they have stopped listening to these warnings.

As long as the debate goes on in terms of physical danger, of course, both sides will be missing the real problem. The

problem is that, while the tiger may have been tamed, it hasn't been housebroken. The damage being caused by this remaining problem may not be as visible, but in the long run it is just as ... inimical. ^[53]

Conclusion

Past negotiations on safeguards have not successfully addressed the key underlying question of adjustment. Multilateral negotiations have dealt with the adjustment issue for the most part in a very indirect fashion, and without reaching agreement. The bilateral understanding between Canada and the United States, and the subsequent FTA between the two countries, skirt the issue of adjustment entirely.

The failure to address adjustment satisfactorily during the Tokyo Round stemmed in part from the idea that the task of negotiating new rules on safeguard was a matter of fixing up the escape clause provided by Article XIX in order to encourage further trade liberalization - the traditional contractual rationale for safeguards. There was also a marked degree of reluctance on the part of many developed countries to see adjustment as an appropriate matter on which countries ought to exchange international obligations, even where those were limited to reporting requirements.

Negotiations during the Tokyo Round and subsequent discussions focused on issues that were related to adjustment, such as

selectivity, surveillance, degressivity, and duration of safeguard measures, but did not engage directly on the matter of adjustment as the root cause of pressures for safeguard protection. Nor did discussion go into any great depth as to the effects of safeguard actions on the adjustment process. Even where mandatory adjustment assistance was proposed directly, as in the LDC submission, adjustment was seen as part of the solution rather than the root of the problem.

What appears to have been missing during the Tokyo Round is any suggestion that countries ought to negotiate direct, meaningful commitments on adjustment. Such commitments are unlikely to be achieved in a agreement whose main provisions relating to adjustment are obscured behind a veil of language setting out conditions for the taking of selective actions. The relationship between safeguard measures and adjustment must be addressed in a more straightforward fashion.

The challenge for the Uruguay Round negotiations on safeguards is to ensure that when safeguard measures are used, they interfere as little as possible with the adjustment process. A minimum requirement of a more direct approach is a surveillance mechanism that would monitor changes in practices within the protected industry and the re-allocation of resources from that industry to others. The failure of the Tokyo Round texts and submissions to envisage rules on the extent to which industries receiving protection ought to be

obliged to undertake adjustment must also be addressed. Some such commitment is needed if a balanced agreement is to be reached on safeguards.

Achieving this goal will be difficult, judging from the long history of failed attempts to reach multilateral agreement on even a modest improvement in disciplines on safeguards. Concerns over selectivity that preoccupied negotiators during previous attempts to negotiate new rules on safeguards must give way to concerns over the overall level of protection imposed by means of safeguard actions. To conduct negotiations such that the adjustment issue is dealt with only indirectly can only complicate the task of reaching agreement on new rules, and make it less likely that any agreement will address the crux of the safeguards problem.

CHAPTER 5: CONCLUSION

The preceding chapters have demonstrated the importance of the relationship between structural adjustment and safeguard actions. The problem of introducing new multilateral disciplines on safeguards has been discussed from the perspective of the role of safeguard actions in the GATT system, the linkages between the usage of various forms of safeguard measures and the adjustment process, and the record of past negotiations. The conclusions presented here will draw on the previous chapters with a view to establishing elements related to adjustment that are crucial to an effective new safeguards regime.

Chapter 1 concluded that, contrary to the views prevailing during the first two decades or so of experience with the GATT system, Article XIX is now recognized widely as a serious weakness in international trade rules. The traditional view of Article XIX as providing an "escape" necessary to encourage the exchange of liberalizing concessions in a satisfactory contractual framework has given way to concern over the trend toward safeguard actions outside the framework of GATT. The launching of the Uruguay Round of multilateral trade negotiations has done little to stem this tide of protectionism, as evidenced by the increased number of grey area measures identified by the GATT Secretariat in the six months following the Punta del Este Declaration.

There is reason for concern due to flaws in the construction and application of Article XIX itself, even absent the trend toward grey area measures. Chapter 2 demonstrated how the provisions of Article XIX tend to frustrate or ignore the basic functions of the GATT. The role of the GATT as a treaty embodying agreed rules to govern international trade is a clear example. The traditional contractual rationale for safeguards is to provide an escape valve, analogous to the *rebus sic stantibus* principle in public international law, that could be invoked in the event of changed circumstances in order to encourage cautious countries to enter into exchanges of trade-liberalizing concessions. This rationale was compromised in GATT practice almost from the beginning when the "unforeseen developments" provision was effectively neutered in an early dispute settlement case. The coherence of the GATT framework of rules has suffered as a result.

The application of Article XIX in practice has led to a situation where the mere fact of an increase in imports can give rise to a safeguard action. Criteria for injury and conditions as to the form and duration of allowable safeguard actions are non-specific and subjective. This lack of specificity, together with the enfeebling of the unforeseen developments provisions, has enabled countries to make use of Article XIX not merely to deal with changed circumstances but to provide cover for trade measures whose effects (if not purposes) are to impede the adjustment process. There would appear to be built into Article XIX a conflict with the objective of

expanding international trade along the lines of comparative advantage that is at the heart of the GATT system. A conflict of such a basic nature can only detract from the credibility of the system, which is particularly serious given the lack of any enforcement authority other than compensation/retaliation.

From this we can conclude that a first requirement for new safeguard disciplines is a clearer set of conditions specifying when safeguard actions may be used. On the basis of past experience with safeguard actions by GATT members, the contractual or "escape valve" rationale for a safeguard clause in the General Agreement is no longer of primary concern. The problem is now to bring grey area measures under GATT discipline and pave the way for the termination of the MFA. The task is therefore one of establishing clear rules governing the use of safeguards as instruments of trade policy in their right, rather than in a derivative fashion with reference to other GATT obligations. The application of these instruments should be subject to well-defined conditions and procedures, as are other instruments of contingent protection.

The exact wording that would set these parameters cannot be determined except through the negotiating process, and is essentially a matter of the political will of the participants. However, it is possible to give some indication of the ways in which current interpretations of Article XIX can be improved. Based on the above analysis, workable disciplines must contain increased precision and

closer constraints on the definition of serious injury in order to restore the credibility of the GATT as a treaty. Increased precision could be achieved in fashion similar to that used in the Tokyo Round Subsidies Code, in which a list of the factors pertinent to a determination of injury is set out. The draft negotiating text prepared by the Chairman of the Negotiating Group suggests that such a list might include output, inventories, utilization of capacity, prices, import and export prices, pace of import increase, return on investment, profits and losses.^[1]

One problem with this approach is that it allows injury findings to be made in a very wide variety of circumstances, effectively weakening the required causal link between the injury and the imports alleged to give rise to it. This link could be strengthened directly by changing the wording relating to causality, for example to require that increased imports be the sole or principal cause of serious injury.^[2] Such a rule change would give legal but not necessarily economic force to a stronger causal link.

A more meaningful approach would be to give substance to a stronger causal link by requiring that a smaller set of principal criteria be satisfied in order to prove injury.^[3] Focussing on the key options open to firms facing new import competition, a first criterion could be the existence of either price suppression or lost sales in the domestic industry. A second criterion, relating to reduced profits, would establish the existence of the key market

signal of declining economic opportunity. These two criteria could be established as necessary but not sufficient conditions for a finding of serious injury, while other factors such as those listed in the draft negotiating text could serve as corollary evidence of injury. This approach would clarify the meaning of serious injury, indirectly strengthen the causal link, and enhance the credibility of the GATT's framework of rules in the area of safeguards.

In addition to the uncertainty and lack of clarity in the current rules, Article XIX may also have a detrimental effect on the function of the GATT as a framework for ongoing trade liberalization, as argued in Chapter 2. While safeguard actions are, of course, by their very nature illiberal, compensation in the form of offsetting liberalization in other sectors can at least require the invoking country to liberalize trade and undergo some adjustment elsewhere in its economy. However, while compensation may be offered by the invoking country in the process of consultation required under Article XIX, there is no obligation to do so. The lack of such an obligation to compensate trading partners affected by a safeguard action means that the restoration of the original reciprocal balance of concessions can, through retaliation, take place at a higher level of overall protection. The mechanism of retaliation provided for in detail in Article XIX contemplates increased trade barriers and, thereby, tends to reduce adjustment pressures in the retaliating countries as well as in the invoking country. Moreover, the requirement that the original safeguard measures be taken on an MFN

basis tends to expand the scope of the compensation/retaliation cycle of trade actions, thereby contributing to instability in the original balance of concessions, rather than enhancing predictability in the trade system as a whole.

The relative disuse of GATT procedures in safeguard actions is an important part of the undermining of the GATT by the use of grey area measures. The credibility of the GATT as the central component of the international trade system has been seriously compromised by the negotiation of VERs and other such arrangements outside GATT disciplines. The requirement in current rules that safeguard measures be taken on an MFN basis makes it more difficult to pay compensation, since more countries are affected, thereby encouraging the resort to grey area measures. This makes it more difficult to consider a complete range of options, including what may be the least protectionist solutions, to situations where safeguard actions are contemplated.

Effective new multilateral disciplines will have to incorporate procedures designed in such a way that countries will both have an incentive to make use of them and be encouraged to re-establish the balance of concessions at a new and lower level of protection overall. A provision favouring consultations leading to compensation as opposed to retaliation could be devised, involving, for example, set time limits for consultations and allowance for an amount of retaliation greater than the amount of compensation calculated on the

basis of trade affected by the original safeguard measure. Invoking countries would have a strong incentive to offer adequate compensation at an early stage in the consultation process. In the event agreement could not be reached between an invoking country and an affected country, a ruling could be sought from a multilateral body established on whether or not the compensation offered was adequate. Improved GATT dispute settlement procedures and facilities, some of which are already in place as a result of the ongoing work of the Negotiating Group on Dispute Settlement, could help make the consultation process more workable.^[4]

Chapter 2 also traced the origins of the main provisions of Article XIX in the debate between the U.S. Congress and the Administration over bilateral trade agreements struck prior to the negotiation of the ITO. The key institutional weakness of the GATT is in part a product of the failure to agree on the establishment of the ITO, which was originally intended to replace the GATT as the central element of the post-World War II international trade order. The lack of supporting institutional mechanisms in the GATT for notification and surveillance has contributed to the weakness of the Article XIX rules and their lack of relevance to the procedural functions of the GATT. New GATT rules on safeguards will require improved mechanisms for surveillance of national trade policies and of the effects of those policies on the adjustment process. Workable procedures for more timely dispute settlement will also be an important feature of new safeguards rules. Although the same could

be said of many other areas of the Uruguay Round negotiations, successful negotiation on safeguards will be particularly dependent on the development of a stronger procedural and institutional basis for the GATT.

The analysis in Chapter 3 of the incidence of safeguard measures over time gives especially clear indications of what is required of new rules and disciplines in order to address the underlying adjustment issue. Measures tend to last much longer than conceivably necessary for any "emergency" reasons, and their application tends to be repeated so often in the same or related sectors that the "breathing space" argument is rarely valid. Two obvious ways to decrease the negative effects of safeguards on the adjustment process are to require that measures be of limited duration, for example three years as under current Canadian law, and that they not be repeatedly applied to the same or related industries. In order to make provisions of this sort meaningful, new safeguard disciplines will have to be accompanied by an effective surveillance mechanism.

The instruments of safeguard protection vary in their nature and their effects, although all are designed to transfer value to recipient industries. The variety of instruments complicates multilateral negotiations on safeguards and necessitates a degree of flexibility in the rules and disciplines created to govern their use. On the basis of the analysis of the main types of instruments in Chapter 3, tariff increases and tariff rate quotas are the preferred

forms of delivering safeguard protection from the point of view of minimizing interference with the adjustment process. While the economic effects of any measure of trade protection can be more or less negative depending on the manner in which they are implemented and administered, tariffs and TRQs are inherently less susceptible to such manipulation, either intentionally or otherwise. Global quotas and VERs, on the other hand, are unequivocally the least desirable types of safeguard measures, principally because of the vested interests they can create. Unfortunately, the incidence of safeguard measures in recent years reveals a rather large number of these actions, in particular VERs, and relatively few tariffs and TRQs.

In order to deal with the adjustment problem that is at the root of the safeguards problem, new safeguard rules will therefore have to put tighter constraints on those forms of measures that have the largest potential negative effects on adjustment. Possible approaches to differentiating the degree of discipline placed on the various forms of safeguard protection could include more onerous reporting requirements for quantitative restrictions such as VERs and global quotas than for price-based measures such as tariffs and TRQs. The former types of safeguard actions could also be subject to requirements for stricter schedules for degressivity over time and shorter overall duration. This would provide invoking countries with the incentive to use instruments that interfere less with the

adjustment process. Where they chose not to do so, it would limit the negative impact on adjustment of any quantitative restrictions put in place.

The analysis of past safeguard actions begs the interesting question of why, if adjustment is at the root of the safeguards issue, international negotiations should not simply address the problem directly. The negotiating history recounted in Chapter 4 shows that, while elements such as duration and degressivity have had indirect relevance to adjustment, the main context in which the issue has been engaged substantively in a direct fashion has been on the question of adjustment assistance. As discussed in Chapter 4, the LDC view in the Tokyo Round negotiations was that the elements of a solution lay in a requirement for the provision of adjustment assistance by governments invoking the safeguard provision. In an important sense, however, this approach was also somewhat indirect, since it would have required merely an ex post "fix" by the invoking country, which might or might not address the industry pressures that gave rise to the safeguard measure. Moreover, it presupposes that subsidization can reinforce or replace the market forces whose operation is impeded by protection.

More generally, the possibility of creating rules requiring the provision of adjustment assistance as a means of directly addressing the conflict between adjustment and the use of safeguard actions faces fundamental problems. Effective international disciplines on

safeguards cannot be created around the idea that active adjustment policies must accompany trade restrictive measures. Any such disciplines, including those proposed by the developing countries in the Tokyo Round, would amount to a prescription for policies that may be debatable on equity and efficiency grounds, and that may strike at the heart of differences between national economic systems. For example, adjustment assistance to firms, as opposed to workers, is of dubious value on efficiency grounds, since it can attract new resources to the protected industry, lead to labour-displacing investment and ultimately result in higher adjustment costs. Adjustment assistance to workers, while more justifiable on efficiency grounds, is inherently inequitable to the extent that it is targeted to trade-displaced workers only and excludes other unemployed workers. Added to this uncertain intellectual foundation is the potential for ideological conflicts over government assistance to business and the appropriate role for government in the economy. The combination does not augur well for a successful negotiation of workable new disciplines, and could prompt just as many countries to resort to measures outside of any new multilateral disciplines as has been the case with Article XIX. An alternative means of addressing the adjustment issue directly is a key requirement of any new safeguard disciplines.

Chapter 3 examined the close relationship between the concept of injury that is at the heart of international disciplines on safeguards and the process of structural adjustment within an open

economy. The correspondence between the factors that demonstrate existence of injury and those that indicate the presence of adjustment pressures is very close. The use of safeguard measures is intended to remedy injury, and, in both theory and practice, generally results in the alleviation of adjustment pressures. Economic theory indicates that the various trade policy instruments used to provide safeguard protection all have dynamic effects on the allocation of resources in the marketplace. The most important lesson of Chapter 3, however, is that there is a fundamental, practical conflict between safeguards and adjustment which must be addressed in the creation of any effective new multilateral rules if they are to outlast the negotiation that gives rise to them.

One aspect of the adjustment issue that is of some importance for the design of effective multilateral disciplines is the need for on-going discipline to deal with the effects of safeguard actions over time on the adjustment process, as opposed to simply setting conditions to be met at a particular point in time. One possibility would be to require that a country using a safeguard measure demonstrate that the protected industry is in fact undergoing adjustment, with or without government assistance, or face increased obligations in respect of the safeguard measure. These obligations could take the form of a shortening of the allowable duration, faster degressivity, increased liability for compensation/retaliation, or a combination of these three. Adjustment would have to be demonstrated in regular reports to a multilateral committee in terms of objective

measurements of either improved ability to face international competition, for example based on improvements in cost structures or price competitiveness, or the progressive shifting of the protected industry into new, unprotected economic activities. Such a provision would have to be less questionable in terms of equity and efficiency than the proposals on adjustment assistance and is likely more negotiable in terms of possible ideological conflicts.

Chapter 4 reviewed the selectivity issue in the context of the arguments put forth in Hudec (1988) regarding the functions of the MFN clause in GATT. To the extent that the MFN principle no longer serves its original purposes in the GATT system, it is incumbent upon negotiators to assess whether moving away from the requirement that safeguards be applied on a strictly MFN basis could improve the prospects for a successful negotiation on safeguards in the Uruguay Round. If new disciplines are to be successfully negotiated at all, some form of selectivity may have to be contemplated at some point in the negotiations if only to ensure that negotiations do not finish before they begin. It is worth noting at this point that the mandate of the Uruguay Round Negotiating Group on Textiles and Clothing calls for the return of textile trade to GATT on the basis of "strengthened" rules, widely understood to mean a new safeguards regime. Unless the developed countries are to forego completely the use of selective trade actions in a sector where they have become institutionalized over the past 25 years, this will necessarily entail some GATT "cover" for selective actions. The necessity of

coming up with a safeguards regime that is both negotiable and allows for the incorporation of textile trade will require that selectivity receive active consideration in the Uruguay Round safeguard negotiations.

Apart from such concerns over its negotiability, insistence on the application of safeguard measures on an MFN basis makes little sense from the point of view of maintaining the stability of the balance of concessions negotiated in other areas of the Uruguay Round. In addition, to the extent that requirements for MFN application have led countries to avoid resorting to Article XIX procedures, maintaining the MFN requirement entails some risk of continued use of grey area measures outside GATT control. Such a development would have to be counted a failure in terms of the main challenge facing negotiators in the Uruguay Round.

Against this danger must be balanced the fact that selective actions such as VERs have been among the most negative of all safeguard measures in terms of their effects on adjustment. For this reason, any selective safeguards allowed under new rules should be especially closely circumscribed in terms of duration, degressivity, adjustment and subjected to more rigorous multilateral surveillance. The requirements outlined above for new disciplines that would deal with the adjustment implications of safeguard actions would form the basis for adequate constraints on selective as well as global safeguard actions.

As a final note on the controversial question of selectivity, it must be acknowledged that the MFN principle has played a vital role in the development of the GATT system of rules. Maintaining the requirement that safeguard actions be taken on an MFN basis would set a standard to be aspired to in the use of safeguards and provide a basis for the exercise of moral suasion by affected exporting countries. However, to cast the issue in this light is to miss the point of the current efforts to bring safeguards under multilateral control. As Wolff (1983) argues,

... the issue is not "selectivity" versus "nondiscrimination". It is whether we will have a GATT that applies to world trade versus one that increasingly does not.... The increasingly widespread contempt for the GATT's rules must be converted to respect.

This cannot be accomplished by our insisting that the GATT must remain pure, and therefore, irrelevant, as its signatories engage in increasingly unregulated trade-restricting activities.^[5]

The challenge for international negotiations on safeguards is to ensure that when safeguard measures are used, they interfere as little as possible with the adjustment process. This paper has outlined the key requirements for an effective new safeguards agreement: rules governing the type, duration and conditions under which safeguard measures may be used; procedures by which their application and their effects are kept under surveillance over time; and the establishment of rights and obligations of interested parties in the event that a measure used in fact inhibits the adjustment

process. Progress in each of these three areas will be required if a new safeguards regime is to deal adequately with the adjustment problem that is at the root of the safeguards issue.

APPENDIX A
DATABASE ON SAFEGUARD ACTIONS

Introduction

This appendix describes the database created for this paper for the purpose of analyzing the patterns of usage of safeguard actions. The tables presented in the text on the number, duration and repeat incidence of safeguard actions are all drawn from this database.

Data Sources

The primary data sources used to identify the individual safeguard actions, or cases, included in the database are the following documents prepared by the Secretariats of the GATT and the OECD:

GATT. 1982. Committee on Safeguards.

Document No. Spec(82)18/Rev. 1. Geneva: GATT Secretariat. 28 May.

- 33 cases documented

GATT. 1987. Drafting History of Article XIX and Its Place in
GATT. Document No. MTN.GNG/NG9/W/7. Geneva: GATT Secretariat.
16 September.

- 134 cases documented

GATT. 1987. Inventory of Article XIX Actions and Other Measures
Which Appear to Serve the Same Purpose.
Document No. MTN.GNG/NG9/W/2/Rev. 1. Geneva: GATT Secretariat.
17 August.

- 67 cases documented

OECD. 1988. Trends in the Use of New Types of Trade-restraining
Measures. (Annex: Summaries of Selected Cases).
Document No. TD/88.3 Annex. 12 January.

- 38 cases documented

These official documents were relied on in order to ensure that the cases included in the database represent safeguard actions that have been recognized as such at the international level more or less in accordance with the definition used in this paper, i.e., a measure of additional protection that is invoked by a government in circumstances where a domestic industry faces actual or potential

injury from an increase in imports that are "fairly" traded, as opposed to dumped, subsidized or otherwise unfairly traded imports. Thus, measures which are in fact standing measures of protection, or measures which are primarily forms of contingent protection other than safeguards, are excluded from the database. Similarly, measures are not included merely because a domestic industry has complained to its national government about a trade practice in another country. Included measures must have been the subject of international attention as safeguard measures per se, though there need not have been international consensus on their character.

It would, of course, be inappropriate to include only those trade actions that countries have accepted as legitimate under current GATT rules, as this would exclude the grey area measures which figure prominently in the analysis in the paper. Nonetheless, in order to confine the scope of the discussion on new GATT safeguard rules, cases have been included in the database only if they have received some attention at the international level, with or without the express consent of the invoking or affected countries. It is hoped that by focusing on these official documents as the primary data sources, the coverage of the database will reasonably approximate the likely ambit of the safeguard negotiations.

A number of other sources, in addition to the official documents cited above as primary data sources, were consulted for verifying and

adding to the information on the cases identified from the above main documents. These additional sources include:

Kostecki, Michel. 1987. "Export-restraint Arrangements and Trade Liberalization". In The World Economy. Volume 10, No. 4. London: Trade Policy Research Centre. December.

Hufbauer, Gary Clyde, and Rosen, Howard F. 1986. Trade Policy for Troubled Industries. Washington, D.C.: Institute for International Economics.

Organization for Economic Cooperation and Development. 1985. Costs and Benefits of Protection Paris: OECD

Perez-Lopez, Jorge. 1987. GATT Safeguards: A Critical Review of Article XIX and Its Implementation in Selected Countries. (Mimeo, draft). February.

Salembier, G.E., Moroz, Andrew R., and Stone, Frank. 1987. The Canadian Import File: Trade, Protection, and Adjustment. Montreal: Institute for Research on Public Policy.

Wolff, Alan Wm. 1983. "Need for New GATT Rules to Govern Safeguard Actions". In Trade Policy in the 1980s. Edited by William R. Cline. Washington, D.C.: Institute for International Economics.

Morici, Peter, and Megna, Laura L. 1983. U.S. Economic Policies Affecting Industrial Trade: A Quantitative Assessment.

Washington, D.C.: National Planning Association.

Variables Input and Calculated

For each case identified from the primary data sources, the following information was available in most cases from the official documents:

- The dates of introduction and termination of the measure;
- Occasionally, the means of termination of the measure;
- The invoking country;
- A description of the product affected by the safeguard action;
- A description of the measure taken;
- Incomplete information on the countries affected, and on compensation and retaliation.

This information was entered onto the database in a slightly different form than presented in the source documents so as to

facilitate computer analysis. For example, the names of invoking parties were standardized, and a second variable (PARTY2) added in the case of FEC actions affecting specific member states (For safeguard actions involving the EEC, the invoking party is generally identified as the EEC on the database except where individual member states are identified as invoking parties in the official documents). The dates of introduction and termination were entered in a format allowing the calculation of the duration of a measure. In view of the lesser quality of information on countries affected and compensation and retaliation, only the number of countries was entered on the database.

Several important new variables were added to each case identified from the primary data sources. First, an industry code was inserted to denote the major producers of the product or products affected by the safeguard action, based on the 1980 Standard Industrial Classification.(SIC)^[1] Where the product or products in question could be classified under two different SIC codes, an additional variable is used to indicate the secondary industry code. An industry aggregation was then constructed for the particular purposes of this paper, with a view to retaining the maximum amount of detailed industry information consistent with practical analytical and presentational considerations. The aggregation groups SIC codes into the following major industry groups:

<u>Industry</u>	<u>SIC Codes</u>
Agriculture	112 - 152
Fishing, Logging, and Mining	311 - 711
Food Products	1011 - 1121
Leather and Rubber Products	1511 - 1712
Textiles	1810 - 1999
Clothing	2400 - 2499
Wood, Furniture and Paper Products	2599 - 2791
Primary and Fabricated Metal Products	2910 - 3099
Machinery and Equipment	3192 - 3199
Transportation Equipment	3231 - 3299
Electrical and Electronic Equipment	3321 - 3359
Non-metal Mineral Products	3512 - 3611
Chemicals and Chemical Products	3712 - 3799
Scientific and Professional Equipment	3912 - 3914
Other Manufacturing	3931 - 3999

A code number was added to each case to indicate the type of measure taken. The following two-tiered original classification

scheme, constructed specially for this database, was used to assign the measure code number:

<u>Measure Type</u>	<u>Sub-codes Included and Description</u>
Tariff-based Measures	<ul style="list-style-type: none"> 1 - Tariff increase <ul style="list-style-type: none"> 1.1 - Change in tariff type 1.2 - Combination of 1 and 1.1 1.2 - Imposition of price limits on existing tariffs 1.12 - Combination of 1.1 and 1.2 1.21 - Combination of 1 and 1.2 1.3 - Change in tariff headings/structure 2 - Tariff surcharge or surtax <ul style="list-style-type: none"> 2.1 - Tariff surcharge or surtax with price limits 2.2 - "Countervailing charge" 2.3 - Surtax subject to price limits (e.g. antidumping type)
Tariff-rate Quotas	<ul style="list-style-type: none"> 3 - Tariff rate quota <ul style="list-style-type: none"> 3.1 - Additional duties over tariff rate quotas

Customs Procedures	4	- Special import valuation
	5	- Import licence ban or limit
	5.1	- Change in import licence conditions
	5.2	- Imposition of new import licence requirement
	5.3	- Import deposit requirement
Global Quotas	6	- Global quota
	6.1	- Global quota with price limits
Voluntary Restraint	7	- Voluntary restraint
Agreements or Similar		agreement (VER)
Arrangements	7.1	- Orderly marketing arrangement (OMA) or VER
	7.2	- Export moderation, indicative export ceiling
	7.3	- Understanding on minimum prices
	7.35	- VER, OMA or similar arrangement with minimum prices
	7.4	- Industry-to-industry arrangement
	7.5	- Monitoring, surveillance

Other Measures	8 - Other quantitative restriction
or embargo (not explicitly
negotiated)

8.1 - Import restriction through
administrative guidance or
surveillance

9 - Suspension of liberalization
(unspecified)

10 - Other measures, not otherwise
provided for |
|----------------|--|

A variable (XIX) is also present for each case on the database to indicate whether or not the measure was notified to the GATT under Article XIX.

Two additional variables were calculated using the information coded onto the database. The duration of each measure (DURATION) was calculated simply by taking the difference between the date of introduction and the termination date. For measures that remained in force in mid-1987, the cut-off point for inclusion in the database, the termination date used for the purpose of calculating duration is either October 1987 or the announced termination date of the measure, (if available), whichever is later. The true duration is therefore understated to the extent that cases still in effect as of October, 1987 could be expected to be remain in force past that date. However, a cursory inspection of the data indicates that measures

still in effect have significantly longer average duration (5.3 years) than the average for all measures over the period 1950-87 (4.3 years). On balance, the calculation of duration, while necessarily somewhat biased, would not seem to be unduly affected in absolute terms by the fact of a cut-off point.

Each record on the database also contains a number of variables created to enable the calculation of repeat incidence. The variable BYPARTY indicates for each case whether or not there are other records on the database coded with the same invoking party and industry code. This variable can be calculated for records within any given span of years, although for the purposes of the analyses of repeat incidence in this paper, this span is set to include all records over the period 1975-87. Repeat incidence is calculated (in Table 3.8) as the percentage of all actions in a given category for which there is a subsequent or precedent incidence.

A second set of variables is coded onto the database to enable the calculation of the repeat incidence of safeguard actions by countries other than the original invoking country. However, due to possible ambiguities in the interpretation of this phenomenon, it was not analyzed in the paper. The variable BYINDUSTRY indicates for each case the number of records in the database with the same industry code but different invoking parties, within a given span of years before or after the record in question.

The database also contains a variable intended to denote the degree of complexity of the type of measure taken. For example, a simple tariff increase is coded as a measure of first degree complexity, whereas a measure involving the replacement of specific tariffs with ad valorem tariffs for products valued over a certain price, combined with a tariff quota, is coded as third degree complexity. However, the assignment of complexity codes is purely arbitrary. There also appears to be no recognizable patterns across countries, industries, types of measures or over time. Analysis of this variable is therefore not included in the paper.

Database Structure and Operations

The database is organized as a Dbase III+ file. Although, Lotus 1-2-3 spreadsheet operations were used for initial data entry and for the construction of some of the variables (e.g. DURATION), the majority of database operations underlying the analysis and data presentation in the paper are performed using DbaseIII+. Following is a complete variable list with sample values for one of the cases on the database and a brief explanation of each variable:

<u>Variable Name</u>	<u>Value</u>	<u>Explanation</u>
CASE	1	Sequential record number
START	dec-50	Date introduced
END	jun-56	Date terminated

STYEAR	50	Used to index by year
ENDYEAR	56	Used to index by year
YRS	5	Calculates duration
MOS	7	Calculates duration
DURATION	5.6	Duration in years
MEANS	XXVIII:4	Means of termination
PARTY	U.S.	Invoking country
PARTY2		Secondary " "
PRODUCT	Women's fur felt hat	Product description
INDUSTRY1	2495	SIC code
INDUSTRY2		Secondary " "
XIX	Y	Notified under GATT?
MEASURE1	Value bracketed duties	Description of measure
MEASURE2	replaced by compound	" "
MEASURE3	rates	" "
MEASURE4		" "
MEASURE5		" "
MEASURE6		" "
MEASURE7		" "
CODENUM	1.12	Code for type of measure
COMPLEXITY	2	Degree of complexity
AFFECTED		No. countries affected
COMPENS		" " compensated
RETALIATED		" " retaliated
BYINDUSTRY	INC	Denotes other records exist for same INDUSTRY1

SPANI	2	Span of years used to test for BYINDUSTRY
BYPARTY	INC	Denotes other records exist for same PARTY
SPAN	50	Span of years used to test for BYPARTY

The database can be used to make interactive queries regarding the frequency or other characteristics of safeguard actions which meet specified conditions. (e.g., to determine how many cases have remained in place for more than ten years). Such queries are instrumental in formulating and testing initial hypotheses about types of safeguard actions or their use in specific countries or industries.

A variety of indexing and sorting routines are used in order to permit more exhaustive analysis of the data according to year of introduction, industry, type of measure, etc. That is, the cases are re-ordered on the database (either physically in the case of a sorting operation or virtually in the case of an indexing operation). DbaseIII+ programs are then used to count the number of cases or calculate the average duration or repeat incidence for each category required for the tables presented in the text (e.g., average duration for all tariff-based measures used by Australia over the period 1975-

87, in Table 3.7). These programs are set up in such a way as to generate tables in approximately the same format presented in the text.

REFERENCES

General (GATT Documents listed separately)

- Balassa, B., and Balassa, C. 1984. "Industrial Protection in the Developed Countries". Mimeo.
- Brownlie, Ian, ed. 1972. Basic Documents in International Law. Oxford: Oxford University Press.
- Camps, Miriam, and Diebold, William Jr. 1983. The New Multilateralism. New York: Council on Foreign Relations.
- Canada. 1983. A Review of Canadian Trade Policy. Ottawa: Minister of Supply and Services.
- Cline, William R. The Future of World Trade in Textiles and Apparel. 1987. Washington, D.C.: Institute for International Economics.
- Corden, W.M. 1984. The Revival of Protectionism. New York: Group of Thirty.
- Dam, Kenneth W. 1970. The GATT: Law and International Economic Organization. Chicago: University of Chicago Press.
- Department of External Affairs. 1984. "Canada/USA understanding on Safeguards". Press release No. 24 and attachment. February 17.
- Department of External Affairs Canada, The Canada U.S. Free Trade Agreement (Ottawa: Minister of Supply and Services, 1988), p. 170.
- Dunkel, Arthur. 1984. "International Trade and Economic Growth". Speech. February.
- Glick, Leslie Alan. 1984. Multilateral Trade Negotiations: World Trade After the Tokyo Round. Totowa, N.J.: Rowman and Allanheld.
- Harris, Richard. 1985. "Why Voluntary Export Restraints Are 'Voluntary'". In Canadian Journal of Economics. Vol. XVIII, No. 4. November. Toronto: University of Toronto Press.
- Hart, Michael M. 1985. Canadian Economic Development and the International Trading System. Toronto: University of Toronto Press.
- Hudec, Robert E. 1975. The GATT Legal System and World Trade Diplomacy. New York: Praeger.

- Hudec, Robert E. 1988. "Tiger, Tiger in the House: A Critical Appraisal of Case Against Discriminatory Trade Measures". In The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems. Edited by Hilf and Petersman. Bielefeld: Kluwer.
- Hufbauer, Gary Clyde, and Rosen, Howard F. 1986. Trade Policy for Troubled Industries. Washington, D.C.: Institute for International Economics.
- Hufbauer, Gary Clyde, and Schott, Jeffrey. 1985. Trading for Growth: The Next Round of Trade Negotiations. Washington, D.C.: Institute for International Economics.
- Industries Assistance Commission. 1983. Passenger and Light Commercial Vehicles - Substitution. No. 35. Canberra: Australian Government Publishing Service. 14 December.
- Jackson, John H. 1969. World Trade and the Law of GATT. Indianapolis: Bobbs-Merrill.
- Jackson, John H., and Davey, William J. 1986. Legal Problems of International Economic Relations: Cases, Materials and Text. Second edition. St. Paul, Minnesota: West Publishing Co.
- Kanu, B.B. 1982. "Safeguard Action and Structural Adjustment Measures". In Protectionism and Structural Adjustment. London: Commonwealth Secretariat.
- Kindleberger, Charles P., and Lindert, Peter H. 1978. International Economics. Homewood, Illinois: Richard D. Irvin, Inc.
- Office of the United States Trade Representative. 1984. "Concept Paper on New Multilateral Trade Negotiations". (Mimeo.) Washington, D.C.: USTR.
- Organization for Economic Cooperation and Development. 1983. Positive Adjustment Policies. Paris: OECD.
- Organization for Economic Cooperation and Development. 1985. Costs and Benefits of Protection. Paris: OECD.
- Organization for Economic Cooperation and Development. 1987. Structural Adjustment and Economic Performance. Paris: OECD.
- Pearson, Charles, and Salembier, Gerry. 1983. Trade, Employment and Adjustment. Montreal: Institute for Research on Public Policy

- Perez-Lopez, Jorge. 1987. GATT Safeguards: A Critical Review of Article XIX and Its Implementation in Selected Countries. (Mimeo, draft). February.
- "Rewriting GATT's rules for a game that has changed". The Economist, September 13, 1986, p. 63.
- Richardson, J. David. 1988. "Safeguards Issues in the Uruguay Round". In Issues in the Uruguay Round. Edited by Robert Baldwin and J. David Richardson. Cambridge, Mass.: National Bureau of Economic Research.
- Salembier, G.E., Moroz, Andrew R., and Stone, Frank. 1987. The Canadian Import File: Trade, Protection, and Adjustment. Montreal: Institute for Research on Public Policy.
- Statistics Canada. 1980. Standard Industrial Classification. Ottawa: Minister of Supply and Services. December.
- Stone, Frank. 1984. Canada, the GATT and the International Trade System. Montreal: Institute for Research on Public Policy.
- Thurow, Lester C. 1980. The Zero-Sum Society. New York: Basic Books.
- United Nations Conference on Trade and Development. 1982. Protectionism and Structural Adjustment. Document No. TD/B/888. Geneva: UNCTAD Secretariat. 15 January.
- Wilcox, Clair. 1949. A Charter for World Trade. New York: Macmillan.
- Winham, Gilbert R. 1986. International Trade and the Tokyo Round Negotiation. Princeton: Princeton University Press.
- Wolff, Alan Wm. 1983. "Need for New GATT Rules to Govern Safeguard Actions". In Trade Policy in the 1980s. Edited by William R. Cline. Washington, D.C.: Institute for International Economics.

GATT Documents

- GATT. 1951. Report on the Withdrawal by the United States of a Tariff Concession Under Article XIX of the GATT. Geneva: GATT Secretariat.
- GATT. 1953. Doc. L/76. Geneva: GATT Secretariat.
- GATT. 1963. Doc. L/2002. Geneva: GATT Secretariat.
- GATT. 1974. GATT Activities in 1973. Geneva: GATT Secretariat.
- GATT. 1976a. United States Proposal for An Improved Multilateral Safeguard System. Document No. MTN/SG/W/11. Geneva: GATT Secretariat. 16 July.
- GATT. 1976b. Statement by the Representative of Canada. Document No. MTN/SG/W/17. Geneva: GATT Secretariat. 4 November.
- GATT. 1978a. Safeguards (Circulated at the Request of Certain Developing Countries). Document No. MTN/INF/17. Geneva: GATT Secretariat. February 6.
- GATT. 1978b. Draft Integrated Text on Safeguards (Circulated at the Request of Several Delegations). Document No. MTN/SG/W/39. Geneva: GATT Secretariat. 22 June.
- GATT. 1979. Safeguards (Note by the Secretariat). Document No. MTN/SG/W/47. Geneva: GATT Secretariat. 11 April.
- GATT. 1983. Report of the Working Party on Structural Adjustment and Trade Policy. Document No. L/5568. Geneva: GATT Secretariat.
- GATT. 1984a. Present Status of the Ministerial Work Programme. Document No. CG.18/W/31. Geneva: GATT Secretariat. 9 May.
- GATT. 1984b. Structural Adjustment and Trade Policy. Document No. CG.18/W/83. Geneva: GATT Secretariat. 8 June.
- GATT. 1986. Ministerial Declaration on the Uruguay Round. Document No. MIN.DEC. Geneva: GATT Secretariat. 20 September.
- GATT. 1987a. The Uruguay Round Round - Decisions of 28 January 1987. Document No. GATT/1405. Geneva: The Secretariat. 5 February.
- GATT. 1987b. "Grey-Area" Measures. Document No. MTN.CNG/NG9/W/6. Geneva: GATT Secretariat. August.

GATT. 1988. Trade Negotiations Committee Meeting at Ministerial Level. Montreal. December 1988 Document No. MTN.TNC/7(MIN). 9 December. Geneva: GATT Secretariat.

GATT. 1989a. Mid-Term Meeting. Document No. MTN.TNC/11. Geneva: GATT Secretariat. 21 April.

GATT. 1989b. Safeguards: Draft Text by the Chairman. Document No. MTN.GNG/NG9/W/25. Geneva: GATT Secretariat. 27 June.

GATT. 1989c. Framework for Negotiations: Submission by Canada, Document No. MTN.GNG/NG10/W/25 Geneva: GATT Secretariat, 28 June.

ENDNOTES

NOTES TO CHAPTER 1

1. Other types of standing protection include discriminatory technical standards or health regulations, customs procedures and import licensing requirements.
2. The provisions of Article XIX are discussed in more detail in Chapter 2.
3. Gary Clyde Hufbauer and Howard F. Rosen, Trade Policy for Troubled Industries (Washington, D.C.: Institute for International Economics, 1986), p. 13.
4. GATT, "Grey-Area" Measures (Geneva: GATT Secretariat, 1987b), p. 4.
5. Organization for Economic Cooperation and Development, Costs and Benefits of Protection (Paris: OECD, 1985), pp. 30-31.
6. Ibid., p. 34.
7. Ibid.
8. Hufbauer and Rosen, 1986, especially pp. 5 - 28.
9. Table 1.1 and subsequent tables are based on a database of safeguard actions constructed from GATT, OECD and other official documents. See Appendix A for a description of data sources and limitations.
10. The following figures are calculated based on information in Hufbauer and Rosen, 1986, Table 2.1, pp. 6 - 9.
11. Organization for Economic Cooperation and Development, 1985, p. 138.
12. Ibid, pp. 155 - 163.
13. Ibid, p. 146.
14. Hufbauer and Rosen, 1986, p.14.
15. See for example W.M. Corden, The Revival of Protectionism (New York: Group of Thirty, 1984) and Organization for Economic Cooperation and Development, Positive Adjustment Policies (Paris: OECD, 1983).
16. Lester C. Thurow, The Zero Sum Society (New York: Basic Books, 1980), p. 191.

17. Gilbert R. Winham, International Trade and the Tokyo Round Negotiation (Princeton: Princeton University Press, 1986), p. 123.

18. Dumping, or selling goods for export at less than their "normal value" in the home market, is dealt with in Article VI of the General Agreement and in the Code on Anti-dumping Duties, which was negotiated in the 1963-1967 Kennedy Round and revised in the 1973-1979 Tokyo Round; subsidies are dealt with in Articles VI and XVI of the General Agreement and in the Subsidies Code negotiated during the Tokyo Round. Both of these Codes have been adopted by some but not all GATT Contracting Parties.

19. GATT, The Uruguay Round - Decisions of 28 January 1987 (Geneva: GATT Secretariat, 1987a, Document No. GATT/1405, 5 February), p. 17.

20. Frank Stone, Canada, the GATT and the International Trade System (Montreal: Institute for Research on Public Policy, 1984), p. 177.

21. The Economist magazine, a leading supporter since the mid-19th century of a liberal international trade order has stated that "[t]he safeguards question is the most crucial" in this regard. ("Rewriting GATT's rules for a game that has changed". September 13, 1986, p. 63.)

22. One writer has used "escapes" as a generic term to denote the provisions of the Charter of the International Trade Organization (ITO) that set out detailed exceptions and possible exemptions from the Charter's general rules (Clair Wilcox, A Charter for World Trade (New York: Macmillan, 1949). Many of these were carried over into the General Agreement, including the predecessor to Article XIX which came to be referred to as the "escape clause", following U.S. terminology. Chapter 2 discusses the origins of Article XIX in detail.

NOTES TO CHAPTER 2

1. As noted in Chapter 1, n. 22 above, there are several other "escapes" written into the General Agreement; the term "escape clause" refers specifically to Article XIX and to its counterpart provisions in domestic trade laws.

2. Reciprocal Trade Agreement with Mexico, Dec. 23, 1942, art. XI, 57 Stat. 833 (1943), E.A.S. No. 311 (effective Jan. 30, 1943); Hearings on the Extension of the Reciprocal Trade Agreements Act Before the House Comm. on Ways and Means, 79th Cong., 1st Sess. 277, 280 (1945). Reprinted in John H. Jackson, World Trade and the Law of GATT (Indianapolis: Bobbs-Merrill, 1969), p. 554.

3. Wilcox, 1949, pp. 43-46, 179-183.

4. Stone, 1984, p. 21.

5. The contracting parties acting jointly will be referred hereinafter as "the Contracting Parties"; similarly, "GATT" refers to the institution as such, while "General Agreement" refers to the accord itself.

6. Jackson, 1969, pp. 120, 145.

7. Stone, 1984, p. 56.

8. Wilcox, 1949, p. 183.

9. Kenneth W. Dam, The GATT: Law and International Economic Organization, (Chicago: University of Chicago Press, 1970), p. 99. The author does, however, highlight the important relationship between Article XIX and Article XXVIII, governing the "Modification of Schedules", which will be examined in Chapter 4.

10. Jackson, 1969, p. 557. The analysis which follows of the provisions of Article XIX draws from Jackson's work.

11. GATT, Document No. L/76 (Geneva: GATT Secretariat, 1953). Further support is to be found in an interpretative note to the Havana (ITO) Charter.

12. Dam, 1970, p. 104.

13. The following list draws upon John H. Jackson and William J. Davey, Legal Problems of International Economic Relations: Cases, Materials and Text, second edition (St. Paul, Minnesota: West Publishing Co., 1986), pp. 428-433.

14. While the Article XIX clearly authorizes retaliation by affected exporting countries, it is interesting to note that nowhere is the term "retaliation" found in the text.

15. Dam, 1970, pp. 104-05.

16. Alan Wm. Wolff, "Need for New GATT Rules to Govern Safeguard Actions", in Trade Policy for the 1980s, ed. William R. Cline (Washington, D.C.: Institute for International Economics, 1983), pp. 380-381.

17. This categorization of the functions of the GATT system is drawn largely from Stone, 1984, pp.23-26, 176-177.

18. Vienna Convention on the Law of Treaties, Part V, Section 3 "Termination and Suspension of the Operation of Treaties", Article 62, "Fundamental Change of Circumstances". Reproduced in Ian Brownlie, ed. Basic Documents in International Law (Oxford: Oxford University Press, 1972), p. 256.

19. Dam, 1970, p. 99.

20. See, for example, B.B. Kanu, "Safeguard Action and Structural Adjustment Measures", in Protectionism and Structural Adjustment (London: Commonwealth Secretariat, 1982).

21. Jackson, 1969, p. 561, quoting from GATT, Report on the Withdrawal by the United States of a Tariff Concession Under Article XIX of the GATT (Geneva: GATT Secretariat, 1951), p. 10. This case is generally referred to as the Hatters' Fur Case.

22. GATT, 1951, p. 12.

23. Jackson, 1969, p. 561.

24. GATT, 1951, p. 22

25. Other provisions of the General Agreement, principally Article XXIII, "Nullification or Impairment", and Article XXVIII, "Modification of Schedules" are available for this purpose and have been used extensively. The particular importance of the latter is discussed in more detail below.

26. See Chapter 3 below.

27. GATT, Document L/2002 (Geneva: GATT Secretariat, 1963), p. 13; see also Jackson, 1969, p. 563.

28. Of 77 items of business identified as complaints under the dispute settlement proceedings of GATT, only 4 were connected in any way with Article XIX. Robert E. Hudec, The GATT Legal System and World Trade Diplomacy (New York: Praeger, 1975), Appendix A, p. 275-296.

29. Of the 134 safeguard actions notified to GATT up to mid-1987, consultations have led to compensation being paid and reported in just nineteen cases, and there have been only eleven cases in which retaliatory withdrawal of concessions has been reported. See Appendix A.

30. Dam, 1970, p. 4-5.

NOTES TO CHAPTER 3

1. This section draws upon the discussion of the relationship between temporary protection and adjustment in Charles Pearson and Gerry Salembier, Trade, Employment and Adjustment (Montreal: Institute for Research on Public Policy, 1983), pp. 19-25.

2. Hufbauer and Rosen, 1986, pp. 19 - 25.

3. Pearson and Salembier, 1983, p. 22.

4. GATT, Structural Adjustment and Trade Policy (Geneva: GATT Secretariat, 1984b), p. 2.

5. J. David Richardson, "Safeguards Issues in the Uruguay Round", in Issues in the Uruguay Round (Cambridge, Mass.: National Bureau of Economic Research, 1988), p. 34 and p. 41 n. 15.

6. See Appendix A. Other sources, principally in academic journals, were consulted as well in order to verify that the official documents suffered from no major omissions. The information available from these official sources on measures other than those notified to GATT under Article XIX is limited prior to about 1975, and non-existent prior to 1965. Comparisons of the frequencies of different categories of measures prior to 1975 are therefore not reliable.

7. The number of actions for the U.S. and EEC is probably underestimated, since several of the actions for which the invoking country is not identifiable in the database (entered as "n/a" in table) appear likely to be attributable to them.

8. OECD, 1987, p. 294, Table 7A.7 estimates the weighted average of Australia's post-Tokyo Round tariffs on finished manufactures at 16% compared to 6.4% for a sample of nine industrialized countries.

9. Jorge Perez-Lopez, GATT Safeguards: A Critical Review of Article XIX and Its Implementation in Selected Countries (Mimeo., draft, 1987), p. 79 also concludes that differences in domestic legislation and practice regarding the ability of private interests to petition for safeguard investigations do not explain the disparities in the frequency with which Article XIX is used.

10. The analyses of the effects of the various types of measures draws upon G.E. Salembier, Andrew R. Moroz and Frank Stone, The Canadian Import File: Trade, Protection and Adjustment (Montreal: Institute for Research on Public Policy, 1987), pp. 18 - 52, and Charles P. Kindleberger and Peter H. Lindert, International Economics (Richard D. Irvin, Inc.: Homewood, Illinois, 1978), pp. 107 - 154.

11. See, for example, Michael M. Hart, Canadian Economic Development and the International Trading System (Toronto: University of Toronto Press, 1985), p. 11, and Stone, 1984, p. 29.

12. OECD, 1985, pp. 35-36.

13. Hufbauer and Rosen, 1986, p. 15 give similar reasons for producers' preference for quotas and other quantitative restraints over tariffs.

14. Kindleberger and Lindert, 1978, p. 152.

15. William R. Cline, The Future of World Trade in Textiles and Apparel (Washington, D.C.: Institute for International Economics, 1987), p. 276-77.

16. The description here of the effects of tariff rate quotas relies in part on Cline, 1987, pp. 258 - 261, 270 - 272.

17. Cline, 1987, pp. 269 - 290 suggests that a regime of TRQs to replace the current restraints on textiles and clothing maintained by developed countries under the Multi-fibre Arrangement.

18. Salembier, Moroz and Stone, 1987, p. 30.

19. This situation can obtain where a dominant firm (or firms) in the domestic industry is forced into a position of price leadership by a VER and where the price elasticity of demand for its products is higher than the cross-price elasticity of demand for its products with respect to the price of imports. Such a situation could be said to characterize the North American automobile industry. Richard Harris, "Why Voluntary Export Restraints are 'Voluntary'", Canadian Journal of Economics, Vol. XVIII, No. 4 (November 1985), pp. 804-5.

20. Gary Clyde Hufbauer and Jeffrey Schott, Trading for Growth: The Next Round of Trade Negotiations (Washington, D.C.: Institute for International Economics, 1985), p. 44.

21. OECD, 1985, p. 92.

22. The remaining measures involved import restrictions imposed with varying degrees of advance consultation with importing countries, and thus fit only loosely into the category of VERs. However, as they were imposed on a discriminatory basis, they are similar in important respects to more clearly "voluntary" VERs.

23. Three measures classified as VERs owing to their explicitly selective application were in fact notified to GATT under Article XIX since they were either subsequent to or ancillary to other Article XIX actions.

24. Part of the explanation for the rather high rate of subsequent incidence of safeguard actions could lie with the classification of dissimilar goods within the same industry. Data aggregation does result in certain cases being counted as repeat occurrences of safeguard protection when the exact goods that are the subject of the safeguard action are distinctly different from the goods protected in the earlier case. This is perhaps particularly in the area of agricultural products, where producers engaged in quite dissimilar activities are often grouped together in relatively broad categories.

However, the vast majority of safeguard protection is accorded to manufacturing industries. From 1975-87, 76% of safeguard actions were in the manufacturing sector, within which individual industries may be more closely identified using a classification tool such as the SIC. In addition, the fact that almost 75% of cases are characterized by subsequent incidence of protection in the same industry classification indicates that one-third of cases would have to be subject to classification error of this kind in order to invalidate the conclusion that safeguard protection is repeated in a majority of cases. Moreover, the occurrence of a request for protection in a related industry producing dissimilar products is also an indication, albeit a weaker one, that structural problems, as opposed to temporary import surges, are the root cause behind the requests for safeguard protection.

NOTES TO CHAPTER 4

1. Winham, 1986, p. 125

2. This section draws on Leslie Allan Glick, Multilateral Trade Negotiations: World Trade After the Tokyo Round (Totowa, N.J.: Rowman and Allanheld, 1984), esp. pp. 33-35 and 112-126 which describe the Tokyo Round negotiating process and supporting documentation in some detail, as well as Winham, 1986.

3. GAIT, GATT Activities in 1973 (Geneva: GATT Secretariat, 1974), p. 3.

4. GATT, United States Proposal for An Improved Multilateral Safeguard System (Geneva: GATT Secretariat, 1976a), p. 2.

5. GATT, Statement by the Representative of Canada (Geneva: GATT Secretariat, 1976b), p. 4.

6. Adjustment assistance may be defined briefly as subsidization of workers and/or firms negatively affected by imports for the ostensible purpose of regaining international competitiveness or shifting their activities to different industries. The merits and practical experience with adjustment assistance programs as alternatives to trade protection are discussed in Pearson and Salembier, 1983, and Salembier, Moroz and Stone, 1987.

7. Winham, 1986, p. 242; GATT, Safeguards (Circulated at the Request of Certain Developing Countries), Document No. MTN/INF/17, (Geneva: GATT Secretariat, February 6, 1978a), p. 2.

8. GATT, Draft Integrated Text on Safeguards (Circulated at the Request of Several Delegations), Document No. MTN/SG/W/39 (Geneva: GATT Secretariat 22, June 1978a).

9. GATT, Safeguards (Note by the Secretariat), Document No. MTN/SG/W/47 (Geneva: GATT Secretariat, 11 April, 1979)

10. This discussion of the course of the Tokyo Round negotiations draws on Winham, 1986 and Glick, 1984.

11. Winham, 1986, p. 247.

12. Stone, 1984, p. 206.

13. Glick, 1984, p. 35.

14. Stone, 1984, p. 207.

15. Stone, 1984, p. 45.

16. GATT, Report of the Working Party on Structural Adjustment and Trade Policy, Document No. L/5568, (Geneva: GATT Secretariat, 1983) (cited in GATT, 1984b).

17. GATT, 1983 (cited in GATT, 1984b, p. 7).

18. Ibid, p. 7.

19. GATT, Present Status of the Ministerial Work Programme, Document No. CG.18/W/81 (Geneva: GATT Secretariat, 9 May, 1984a), p. i.

20. Department of External Affairs Canada, "Canada/USA Understanding on Safeguard", Press Release No. 24, February 17, 1984, p 2.

21. Department of External Affairs Canada, The Canada U.S. Free Trade Agreement (Ottawa: Minister of Supply and Services, 1988), p. 170.

22. GATT, Ministerial Declaration on the Uruguay Round, Document No. MIN.DEC (Geneva: GATT Secretariat, 20 September, 1986), p. 7.

23. At the time of writing, a number of submissions had been received by the Negotiating Group on Safeguards. As the author has recently taken on responsibilities in the safeguards area on behalf of the Government of Canada, no comment on these submissions will be offered in this paper. Since the Uruguay Round negotiations on safeguards were still at an early stage at that time, their exclusion should not influence unduly the analysis of the Uruguay Round prospects.

24. GATT, Mid-Term Meeting, Document No. MTN.TNC/11 (Geneva: GATT Secretariat, 21 April, 1989a), p. 17.

25. GATT, Safeguards: Draft Text by the Chairman, Document No. MTN.GNG/NG9/W/25 (Geneva: GATT Secretariat, 27 June, 1989b), (covering note).

26. Ibid., p. 2.

27. The following list draws upon Jackson and Davey, 1986, pp. 428-433. In addition to the five main purposes noted in the text, from the particular point of view of the U.S., the MFN rule served two additional purposes: as an instrument to attack, within a multilateral framework, the systems of trade preferences maintained by the U.K. and other countries in the early post-war period; and as a constraint on the discretion of the Administration in its exercise of the trade negotiating authority delegated to it by Congress.

28. Robert E. Hudec, "Tiger, Tiger in the House: A Critical Appraisal of Case Against Discriminatory Trade Measures", in The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems, ed. Hilf and Petersman (Bielefeld: Kluwer, 1988), pp. 188 - 202.

29. Ibid., p. 192.

30. Ibid.

31. Ibid., p. 194.

32. Ibid, p. 199.

33. Ibid., p. 202.

NOTES TO CHAPTER 5

1. GATT, 1989b, p. 2.

2. The Chairman's draft negotiating text proposes a rather more tentative requirement, namely that "serious injury or threat thereof not causally linked to increased imports shall not weigh in the process of determination." GATT, 1989b, p. 2.

3. This approach has been suggested in respect of material injury for the purpose of countervailing duty determinations in GATT, Framework for Negotiations: Submission by Canada, Document No. MTN.GNG/NG10/W/25 (Geneva: GATT Secretariat, 28 June, 1989c).

4. GATT, Trade Negotiations Committee Meeting at Ministerial Level, Document No. MTN.TNC/7(MIN) (Geneva: GATT Secretariat, 9 December 1988), pp. 26-33.

5. Wolff, 1983, p 391.

NOTES TO APPENDIX A

1. Statistics Canada, Standard Industrial Classification. (Ottawa: Minister of Supply and Services, December 1980.

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